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PROCEEDINGS

JUDGE ALBERS: By the authority vested in me by the Illinois Commerce Commission, I now call Docket Numbers 11-0279 and 11-0282.

These dockets concern the proposed general increase in electric and natural gas delivery service rates for Ameren Illinois Company, d/b/a Ameren Illinois.

May I have appearances for the record, please?

MR. FLYNN: Christopher W. Flynn on behalf of Ameren Illinois Company.

MR. WHITT: Also on behalf of Ameren Illinois, law firm of Carpenter, Lipps & Leland by Mark Whitt, Albert Sturtevant, Christopher Kennedy, and Rebecca Segal.

MR. OLIVERO: Appearing on behalf of the staff witnesses of the Illinois Commerce Commission, John Sagone, Janis Von Qualen and Jim Olivero.

MR. TOMC: Matthew R. Tomc and Edward C. Fitzhenry on behalf of the Ameren Illinois Company, St. Louis, Missouri.



1           MS. MUNSCH:   Appearing on behalf of the  
2   Citizens Utility Board, Kristen Munsch (M-u-n-s-c-h),  
3   Julie Soderna (S-o-d-e-r-n-a) and Christie Hicks, 309  
4   West Washington Street, Suite 800, Chicago, Illinois  
5   60606.

6           MR. TOWNSEND:   On behalf of the Retail Gas  
7   Suppliers comprised of Interstate Gas Supply of  
8   Illinois, Inc. and Dominion Retail, the law firm of  
9   DLA Piper LLP (US) by Christopher J. Townsend and  
10   Christopher N. Skey and Michael R. Strong, 203 North  
11   LaSalle, Chicago, Illinois, 60601.

12          MR. REDDICK:   Appearing for the Illinois  
13   Industrial Energy Consumers, Eric Robertson of  
14   Lueders, Robertson & Konzen, 1939 Delmar Avenue,  
15   Granite City, Illinois 62040, and Conrad Reddick,  
16   1015 Crest Street, Wheaton, Illinois 60189.

17          MR. BOROVIK:   Appearing on behalf of the People  
18   of the State of Illinois, Michael Borovik and Kathy  
19   Yu, spelled Y-u; 100 West Randolph Street, 11th  
20   Floor, Chicago, Illinois 60601.

21          MS. KYLER:   On behalf of the Kroger Company,  
22   Jody Kyler and Kurt Boehm, law firm of Boehm, Kurtz &

1 Lowry, 36 East Seventh Street, Cincinnati, Ohio  
2 45202.

3 MR. JENKINS: Good morning.

4 On behalf of the Commercial Group,  
5 Alan Jenkins, A-l-a-n, 2265 Roswell Road, Marietta,  
6 Georgia.

7 JUDGE ALBERS: Any others?

8 Let the record show no response.

9 In terms of preliminary matters, the  
10 only thing I'm aware of is that with regard to the  
11 Retail Gas Supplier's motion to compel, we received  
12 last night the response of CUB to the motion, and  
13 Mr. Townsend has informed me this morning that he  
14 would like to offer some oral argument on that motion  
15 this morning.

16 So why don't we go ahead and do that  
17 first before we hear from any witnesses.

18 Mr. Townsend?

19 MR. TOWNSEND: Thank you very much, Your Honor.

20 Really there are two separate issues  
21 associated with CUB's response to the data requests  
22 that RGS has served on them.

1                   First is that there are a number of  
2   data requests to which CUB still has not yet fully  
3   responded, so the typical motion to compel type of  
4   issue.

5                   Second is that CUB has improperly  
6   delayed in providing a substantial amount of  
7   information just recently providing us with an  
8   enormous amount of information, and they still have  
9   not yet fully produced all of the documents that they  
10   say that they are going to produce.

11                  So that delay issue is a significant  
12   issue for us as we try to prepare for the  
13   cross-examination of Mr. Thomas which is currently  
14   scheduled for Friday.

15                  And just to put the delay into  
16   perspective, the testimony of Mr. Thomas was filed on  
17   August 23rd. The data requests were served on  
18   August 26th. The full responses were due on  
19   September 2nd.

20                  CUB acknowledged that its original  
21   response to the data requests was not sufficient.  
22   Actually, ahead of time, they told us that they were

1 not going to be able to provide sufficient response  
2 on the 2nd, and they told us that we would get a full  
3 response on September 6th.

4 We've been repeatedly told by counsel  
5 in a number of informal conversations as well as in a  
6 formal discovery conference and even on the record as  
7 late as Monday that we would be receiving substantial  
8 information only to be disappointed when the date  
9 came about when they said that they were going to  
10 provide the information.

11 Again, originally we were told that  
12 due to Mr. Thomas's travel schedule, we'd get  
13 complete responses on September 6th.

14 We didn't receive anything on  
15 September 6th. It wasn't until September 8th that we  
16 finally received any supplemental response to the  
17 data requests.

18 On September 8th, we contacted CUB.  
19 We said that they were insufficient. We were  
20 surprised at the lack of additional documentation,  
21 and we immediately scheduled a discovery call for the  
22 next morning.

1                   So we had a discovery conference on  
2     September 9th in which CUB committed to provide  
3     additional documents.

4                   When we filed the motion to compel  
5     literally at the close of business on September 9th,  
6     we still had not received a single document from CUB  
7     in support of the responses to the data requests.

8                   Now, in the response that they filed  
9     last night, they say that they've provided thousands  
10    of pages. Now, I haven't tried to count the number  
11    of pages but that may very well be true. They  
12    probably provided over a thousand pages, and again,  
13    we're expecting more information yet today.

14                  The actual source code for the gas  
15    market monitor wasn't provided until late yesterday  
16    afternoon when they knew that our expert already had  
17    conflicts for the remainder of the week. That's why  
18    he had to be presented yesterday.

19                  So providing this volume of documents  
20    and some complex documents, again, 40 pages of source  
21    code that we received late yesterday afternoon,  
22    really makes it impossible to digest all of that

1 information in time for Mr. Thomas's  
2 cross-examination on Friday.

3 We've approached CUB about the idea of  
4 being able to have the ability to recall Mr. Thomas  
5 once we've had a chance to digest the information  
6 that we receive asking if there was a time next week  
7 that might be convenient, and we were rebuffed and  
8 were told that that's not an acceptable solution that  
9 they're willing to agree to coming into the oral  
10 argument today.

11 So that's one issue is the delay. We  
12 would specifically request that we have the ability  
13 to digest that information and recall Mr. Thomas  
14 because we know that we aren't going to be able to  
15 fully digest that source code within the next couple  
16 of days, as well as, again, documents that we still  
17 haven't received that they've committed to provide us  
18 yet today.

19 Secondly, there are some specific  
20 examples of deficient answers, so again, on the  
21 typical motion to compel type of argument, we  
22 attached the full responses that we had as of the

1 close of business on Friday, and I have just  
2 highlighted a few of these. It would be very helpful  
3 to have a ruling directing CUB to actually provide  
4 the full responses to the data requests.

5 I don't know if you have before you a  
6 copy of the motion to compel with the attachments.

7 JUDGE ALBERS: Yes.

8 MR. TOWNSEND: If you'd flip to the Attachment  
9 C, so go from the very back, we're looking at the  
10 response to RGS-CUB 1.18, and this one says,  
11 "Referring to the methodology section of CUB's gas  
12 market monitor on CUB's website, please fully explain  
13 in detail any changes to the methodology that have  
14 been made including a full and detailed explanation  
15 of why such changes were made."

16 Now, we know that the market monitor  
17 includes data that goes all the way back to 2003, and  
18 CUB acknowledges that it has made some changes and  
19 that these changes in some instances were made  
20 retroactively; in some instances, apparently they  
21 weren't.

22 In the discovery -- well, I guess

1 first, if you look at the answer that CUB provided  
2 originally, and again, this is one that they  
3 recognized was deficient on September 2nd, they said  
4 in the last sentence of their response, "To the  
5 extent that any specific list of changes the timing  
6 and reasons can be provided, CUB will attempt to do  
7 so in a supplemental response."

8 We have not received any of that  
9 information.

10 CUB also committed in the discovery  
11 conference that they would explain when changes were  
12 made retroactively and when they weren't made  
13 retroactively. We don't have that information.

14 There was a supplemental response to  
15 1.18 that we received.

16 May I approach?

17 JUDGE ALBERS: Yes.

18 MR. TOWNSEND: This is the supplemental  
19 response. You'll see again that CUB has failed to  
20 provide any of the information about what changes  
21 were made to the methodology, when those changes were  
22 made, the reasons why, and whether or not they were



1     applied retroactively.

2                     So that's one specific example is  
3     finding out additional information with regards to  
4     that data request and information that actually CUB  
5     has agreed that it would provide.

6                     The second set, second group of issues  
7     really starts with RGS-CUB 1.20, and it's 1.20  
8     through 1.22.

9                     One of the many issues that we have  
10    with the gas market monitor is that it appears to  
11    declare a plan, an offer that ARGS makes in the  
12    market, so the gas market monitor looks at the plans  
13    or offers that the ARGS make and it declares the plan  
14    a winner or a loser, and it appears to do this right  
15    out of the box. So as soon as it hears about a new  
16    offer in the marketplace, it declares whether or not  
17    that's a winner or a loser plan.

18                    Now, the problem is that there's not a  
19    PGA, there's not a price to compare from the utility  
20    the purchase gas adjustment for that year going  
21    forward, so a plan that's offered in August, that was  
22    offered in August of 2011, it's a one-year plan. You

1     have to have something to compare it to to decide  
2     whether or not that's a winner or a loser plan.

3                     We are asking within these data  
4     requests how is it that you're actually making that  
5     calculation. How are you deciding whether or not  
6     it's a winner or a loser. Walk us through how it is  
7     that this is done.

8                     Again, we had actually a productive  
9     conversation with CUB in the discovery conference  
10    about providing an example of what this would  
11    actually look like, and if you look at the actual  
12    data requests themselves, 1.20 says, look at a  
13    variable plan and tell us, you know, how is it that  
14    you can declare whether or not it's a winner or a  
15    loser when you don't know what the PGA is.

16                    1.21 says, look at a fixed price plan  
17    and say, okay, here's a fixed price plan. This is  
18    what we're comparing it to. This is how we go about  
19    determining whether or not it's a winner or a loser.

20                    And then 1.22 says, if you've got a  
21    new product in the marketplace, how do you actually  
22    go through and calculate the savings and the loss.

1 And walk us through that process.

2 Again, that was something that we  
3 talked about. They recognize that example would be  
4 helpful to be able to understand how it is that that  
5 actually works.

6 By the time we had the discovery  
7 conference actually, we had issued another set of  
8 data requests.

9 May I approach, Your Honor?

10 JUDGE ALBERS: Yes.

11 Just so we're clear to begin with, the  
12 one you just gave us, the RGS-CUB 2.06, that's not  
13 part of the motion to compel?

14 MR. TOWNSEND: This is not actually -- this was  
15 not included in the original motion to compel though  
16 you'll see that it goes back to the original. You  
17 know, the subject matter of RGS-CUB 2.06 is the  
18 responses to the first set.

19 And so, again, we've looked at those.  
20 We've said those aren't sufficient to be able to  
21 provide us with the information that we need, and  
22 rather than waiting for the discovery conference,

1 let's just get another set of data requests out  
2 there.

3 We actually served those on CUB on  
4 September 9th. Oh, I'm sorry. On September 7th we  
5 served those on CUB, and contrary to their response  
6 that they filed last night, they did have a due date.  
7 The due date was four days after the date that they  
8 were served on them. So they were actually due on  
9 September 11th underneath the case management order  
10 that Your Honors had approved. They had four days to  
11 respond to that.

12 We didn't receive this response until  
13 yesterday, and as you'll see in sub points D and E,  
14 we again are asking for the specific example of going  
15 through the calculation how you deal with the fact  
16 that you've got a fixed price product. Again, this  
17 is going back to the idea that you don't have all of  
18 the data necessary to determine whether or not this  
19 is a winner or a loser. Explain to us how it is that  
20 you can possibly do that.

21 They didn't walk through an example in  
22 CUB 1.01, so we asked for that, and the response is,

1     just go back and look at 1.1.

2                     And again, they were specific  
3     questions with regards to 1.20, 1.21, 1.22. We  
4     talked about it in the discovery conference. They  
5     said that they would provide us with an example. We  
6     acknowledged, everybody acknowledged that it was the  
7     subject of yet another data request. They failed to  
8     provide that information.

9                     So that's the second grouping is the  
10    issue of actually providing examples.

11                    The language issue that I highlight --  
12    again, we try to be thorough in going through the  
13    responses that we've been receiving; we still have  
14    some that are outstanding -- but 1.29, so right  
15    towards the end of the motion to compel. Oh, and  
16    just for the record, 1.20 through 1.22 were not  
17    supplemented in any way. We never did get a  
18    supplement to those.

19                    1.29 points to a couple of figures  
20    that are in Mr. Thomas's testimony, and we asked for  
21    all the work papers and other documents related to  
22    the derivation of those claims. Essentially, show us

1     your math.   And we still have not received a  
2     supplement to that to show us what that math is.

3                   Again, we have received inputs to the  
4     market monitor, you know, in these thousand plus  
5     pages that we've received.   We've received the source  
6     code for the market monitor, but we want to see the  
7     math.   What is it that is actually used to come up  
8     with those figures.   And we still don't have  
9     responses to that, and I think that's a reasonable  
10    request that remains unanswered.

11                   So again, Your Honors, I guess that  
12    the request that we have today, the remedy that we  
13    would like is first to be able to have the ability to  
14    actually digest the responses and recall Mr. Thomas  
15    if we determine that it's necessary, and then,  
16    secondly, compel the specific responses to 1.18,  
17    1.20, 21, 22 and 29.

18                   Thank you.

19                   JUDGE ALBERS:   Originally I think I saw in your  
20    motion there was other DRs you were seeking responses  
21    to.

22                   Are you cutting back on those?

1           MR. TOWNSEND: Yeah, I think if we were able to  
2   get that information that I just asked for that that  
3   would go a long way. I think that the examples, for  
4   example, would provide us with additional information  
5   that would be helpful in digesting the other  
6   responses.

7           JUDGE ALBERS: So you want us to focus on 1?

8           MR. TOWNSEND: I'd like for you to just focus  
9   right now on 1.18, 1.20, 21, 22 and 29.

10          JUDGE ALBERS: Okay. You're no longer worried  
11   about the other ones. I just want to be clear on  
12   that.

13          MR. TOWNSEND: At this point I guess we would  
14   withdraw the motion to compel with regards to those  
15   contingent on getting the other information that  
16   we're requesting in these data requests and, again,  
17   digesting the actual use of the 40 pages of source  
18   code.

19          JUDGE ALBERS: Okay. So 1.18, 1.20, 1.21 and  
20   1.22.

21          MR. TOWNSEND: That's correct, and, I'm sorry,  
22   1.29.

1 JUDGE ALBERS: Yes. Thank you.

2 MR. TOWNSEND: Thank you.

3 JUDGE ALBERS: Ms. Munsch?

4 MS. MUNSCH: Thank you, Your Honors. Good  
5 morning.

6 As Mr. Townsend indicated, CUB has  
7 been involved in numerous bounds of discussion in  
8 discovery conferences regarding the requests that we  
9 received from RGS.

10 We've provided an answer to every  
11 single request that has been asked of us, and we said  
12 that to the extent it's possible, we would update  
13 accordingly.

14 It appears that our commitment to  
15 endeavoring to provide the most complete information  
16 possible to enable RGS to check the math, which they  
17 have indicated is what they want to do, has so far  
18 been insufficient in their minds.

19 The problem is that what they're  
20 asking for you just heard. They wanted to have us  
21 test hypothetical examples so they could ask  
22 Mr. Thomas on cross-examination. You just heard



1 exactly what he would like to ask him.

2                   We've provided the work papers that  
3 test the statement about, that he requests in 1.29 on  
4 whether or not he believes that Mr. Thomas's  
5 statement is accurate. Those work papers are the  
6 Excel files, the database, and the code. As we  
7 explained in the response to 1.01, we have a process  
8 that we have told them as to how the gas market  
9 monitor works which is why that response and the  
10 response of consumption refer back to that.

11                   To the extent that RGS would like to  
12 test the math, they are able to do so with the  
13 information we've provided them. We're not obliged  
14 to create evidence that doesn't exist on behalf of an  
15 adverse party in this proceeding, and in the  
16 discovery conference, we informed RGS the extent of  
17 what we had available in the office, the extent of  
18 what we were going to endeavor to give him as soon as  
19 possible, the extent that we were going to go through  
20 and review our e-mails, go through and review the  
21 information to help them have an understanding of how  
22 the gas market monitor operates.

1                   Mr. Thomas's testimony in this case  
2 focuses on the recommendation from RGS witness  
3 Mr. Crist that the ITC direct Ameren to institute a  
4 residential and small commercial gas choice program.

5                   Mr. Thomas based his recommendation  
6 that the Commission should deny Mr. Crist's  
7 recommendation in part on the statement that he  
8 reviewed the gas market monitor's most recent  
9 performance, in part on the fact that he had had  
10 experience at CUB dealing with consumer complaints  
11 and litigation around ARGS operating in the northern  
12 territories, and in part on the fact that it was his  
13 understanding Ameren did not want to institute the  
14 program.

15                   We've provided sufficient information  
16 for RGS to conduct cross-examination if they so  
17 choose, ask questions that would establish whether or  
18 not they feel that Mr. Thomas's opinion should be  
19 given equal weight to that of their own.

20                   Any further response that we would  
21 have to generate that they're seeking would not be  
22 likely to lead to production of relevant evidence.

1     They said they want to check the math.   The math has  
2     been provided to them.

3                     We've gone through now three rounds of  
4     supplemental updates.   We have answered the second  
5     set.   We have done all of this in the span of I think  
6     it's 18 days during which our witness has been out of  
7     the country, and we've been involved in another rate  
8     case and involved in a delivery services rate case,  
9     the instant case right here.

10                    They have 150 minutes of time reserved  
11    for Mr. Townsend on Friday.   You've already heard the  
12    examples of the questions that they would like to ask  
13    him.   They can do so then.

14                    MR. TOWNSEND:   Respectfully, they still haven't  
15    answered the questions that we've asked.   Again, if  
16    you go through each one of the groupings, it's clear  
17    that they have not actually provided the responses  
18    that they've committed to give to us.

19                    When they say that they have provided  
20    the work papers to come up with the math for us to be  
21    able to test the math, what we've received was a  
22    spreadsheet that had over 5,000 entries with regards

1 to contracts.

2 Now, Mr. Thomas testifies with regards  
3 to 4,512 different claims. We have no way of knowing  
4 which plans out of the over 5,000 are included or  
5 excluded. They have not shown us the math associated  
6 with that. And so that's with regards to 1.29.

7 They committed to provide us with  
8 examples. Now they're saying, well, we're not going  
9 to give you examples, and obviously, those are  
10 relevant questions, certainly legitimate discovery  
11 questions and things that they said that they would  
12 provide to us.

13 1.18 likewise. They said that they  
14 would provide to us a specific list of changes, the  
15 timing and reasons for the changes of the methodology  
16 and also tell us when they were made retroactively.

17 We just don't have that information,  
18 and they've committed to provide it previously.

19 It seems that all we're asking is for  
20 you to tell them to do what they said that they would  
21 do.

22 JUDGE ALBERS: Just to make sure I'm clear as

1 to what you have gotten and what you haven't gotten,  
2 given the five DRs you're both concerned about right  
3 now, specifically with regard to 1.18, the response  
4 you got from CUB in total consists of what you showed  
5 in Attachment C as well as the supplemental response  
6 that was handed out this morning?

7 MR. TOWNSEND: That's correct.

8 JUDGE ALBERS: And there's been no other  
9 associated --

10 MR. TOWNSEND: No further supplement to that.

11 JUDGE ALBERS: Okay. And then with 1.20, the  
12 only response you got is what you got in response to  
13 1.01?

14 MR. TOWNSEND: That's right.

15 JUDGE ALBERS: Okay. And then with regard to  
16 1.21, again, the only response you've gotten is the  
17 response that you got with regard to 1.01?

18 MR. TOWNSEND: That's right.

19 JUDGE ALBERS: And...

20 MR. TOWNSEND: And likewise with 1.22, all  
21 we've received is the response that they provided to  
22 1.22.

1 JUDGE ALBERS: With those four then, there's no  
2 work papers or other types of documentation you've  
3 gotten?

4 MR. TOWNSEND: That's right.

5 JUDGE ALBERS: All right. And then with regard  
6 to 1.29...

7 MR. TOWNSEND: Again, all we've gotten is 1.29  
8 and the reference back to 1.01.

9 JUDGE ALBERS: 01. Okay.

10 (Pause)

11 JUDGE ALBERS: And then with regard to the  
12 response on 1.01, is there any other associated work  
13 papers or documentation in support of that response?

14 MS. MUNSCH: The response to 1.01 has been  
15 updated once at the request of RGS I guess to make it  
16 more explicit. They asked us to add a word at one  
17 point, which we did.

18 The response to 1.01 describes the  
19 process, but I believe there's been a second  
20 supplemental response that updated it that then  
21 clarified how fixed versus variable was dealt with  
22 and how the time frames were calculated which I

1 think, for example, was one of the concerns later on  
2 in the 1.20, 1.21 and 1.22 distinction.

3                   There has not been a third  
4 supplemental update I believe to 1.01.

5           MR. TOWNSEND: And in none of those response  
6 did we get an example of the way in which they  
7 calculate the fixed versus the variable. They never  
8 provided that, and that is specifically with regards  
9 to the 1.20, 21 and 22. That is what we are looking  
10 to have compel out of those responses is the example,  
11 and that again is reiterated in 2.06. It's something  
12 that they've committed to provide to us and they  
13 failed to provide.

14           MS. MUNSCH: Just one point of update, Your  
15 Honor.

16                   Actually, there is a third  
17 supplemental response. It does refer to the program  
18 code today, database administration which would go to  
19 1.08 as well.

20           JUDGE ALBERS: And I guess in the original  
21 1.20, 1.21 and 1.22 you didn't ask for an example  
22 then but as part of your discussions you asked for an

1       example to try to help get a response?

2               MS. MUNSCH:  Well, and I think that we've had  
3       ongoing discussions trying to explain that  
4       distinction and answer their concern, and, you know,  
5       we've to the best of our ability represented and  
6       answered that question.

7                       1.01 describes it.  The additional  
8       information would enable them, if they have the  
9       codes, to be able to see how it is arranged.

10                      To the extent that they need to  
11       explore further distinctions, I mean, that's the  
12       question that can be asked, and I think that if the  
13       concern is that fixed versus variable needs to be  
14       explored, a fixed rate or a variable rate, we've  
15       provided them the information to prepare to do  
16       cross-examination.

17               MR. TOWNSEND:  I mean, simply we cannot conduct  
18       that cross-examination because we don't know how  
19       they're using the code.  You know, just providing  
20       somebody with a code for a computer program doesn't  
21       explain to the person asking the question how is it  
22       that you use it.  That's what this asks is how is it



1     that you use the code.

2                     And again, we agreed that the best way  
3     to be able to illustrate, to educate us to show us  
4     what it is that they do is to provide us with an  
5     example. I still haven't heard, why can't we get  
6     those examples? It's something that they committed  
7     to, and now they've not provided it.

8             MS. MUNSCH: We've provided, as I believe  
9     Mr. Townsend characterizes, thousands of pages that  
10    have been put together to answer their request to  
11    which we have been as responsive as we can be given  
12    what Mr. Thomas said. This goes to the weight of his  
13    opinion, and this goes to testing the accuracy of  
14    that statement. They have the information to do  
15    that.

16                    We have continued to work on getting  
17    that information to them. In fact, RGS agreed with  
18    us it was most important to begin trying to  
19    prioritize and answer the discovery request, so we  
20    did. We focused on providing them the database, the  
21    code, and the spreadsheets that they expressed the  
22    ability to test the math was their primary concern.

1       We've been responsive to that.

2               MR. TOWNSEND:   And one of the things that we  
3       talked about as being a priority was providing an  
4       example because that provides a concrete basis for us  
5       to be able to have that conversation, and I still,  
6       sitting here, haven't heard why -- I mean, if they're  
7       incapable of providing an example, just say that we  
8       can't do that, but that's not what I'm -- I can't  
9       believe that that's the case, but perhaps that is.

10              JUDGE ALBERS:   Can you give me an example of  
11       the kind of example that you're looking for?

12              MR. TOWNSEND:   Sure.

13              JUDGE ALBERS:   What kind of parameters are you  
14       wanting them to assume?

15              MR. TOWNSEND:   The market monitor has a number  
16       of listings of plans so it says, and there was a  
17       variable rate plan that was offered in August of  
18       2011.

19                               That plan, it is projected to either  
20       be a savings to customers, in which case it appears  
21       as a black number for the savings, or it appears as a  
22       red number, in which case they're projecting that the

1 plan would be a loss.

2 I don't understand, RGS does not  
3 understand how it is that they are able to go through  
4 and take the data inputs, go through and then say, in  
5 particular for a rate that is currently being  
6 offered, say for a yearlong rate how it is that plan  
7 is either a winner or a loser. How it is either, you  
8 know, projected to save customers money or they're  
9 projected to lose money.

10 Just walk through the math on one of  
11 those examples to show here's the input that we take.  
12 It's an input that we receive from an e-mail to an  
13 ARGS. We take that input. We do this type of  
14 calculation with it to be able to extrapolate it for  
15 the entire term, walk through that math, and then we  
16 compare it to some number.

17 Again, it can't be the actual PGA  
18 number for the time going forward because they say  
19 that they're only looking retrospectively. We don't  
20 have a PGA that goes forward for the year.

21 So how is it that they're coming up  
22 with the decision that the plan is either a winner or

1 a loser?

2 MS. MUNSCH: Your Honors, I need to clarify, it  
3 is a retrospective adjustment. We made that clear to  
4 RGS, that the gas market monitor doesn't project out  
5 the performance of the plan. It does precisely what  
6 Mr. Thomas said in his testimony when we informed  
7 RGS. It provides a historical comparison of a plan  
8 to the utility's PGA which is why we've explained  
9 there is no forward projection.

10 So, I'm sorry, I just wanted to make  
11 that clear, Your Honor.

12 JUDGE ALBERS: So RGS would like CUB to say,  
13 you know, if company X had a fixed price plan of X  
14 cents per therm, this is what it would produce over  
15 12 months, and then what CUB is telling me is that  
16 what we do is we, when we get a real scenario, we  
17 take that number, and we apply it to the past 12  
18 months or whatever period of time, and had there  
19 been, had we known the PGA or had it been in place  
20 had that plan been in place in the past, this is how  
21 we compare it to the known PGA.

22 MS. MUNSCH: Your Honor, what it is, it's a

1 snapshot of the plan's performance to date, so there  
2 is neither a, what would I say, historical back  
3 comparison or a projection. It's a snapshot of how  
4 it performs to date, and that's why we're unable to  
5 provide an example of how it would be projected out  
6 or how it would be retrospectively projected back.  
7 And by retrospective, I mean, it's compared to the  
8 most recent PGA, and if the PGA varies, the gas  
9 market monitor varies. If the price of the plan  
10 varies, the price of the plan varies. The two are  
11 matched, and the average savings or losses is purely  
12 a mathematical calculation that's updated every month  
13 based upon the PGA. There's no projection. The  
14 average savings and losses as we explain in 1.01  
15 move. It's a fluctuating monitor.

16 JUDGE ALBERS: So assume some numeric value,  
17 plug it in, and see how the numbers fall out.

18 MR. TOWNSEND: That's exactly right. So if  
19 that's the case, you could never have a yearlong  
20 product that started in 2011, and they do have  
21 yearlong products that would be going all the way  
22 through the entire term, so there has to be some

1     assumption associated with that in order to be able  
2     to determine whether or not a forward looking  
3     yearlong plan is going to be a winner or a loser.

4                     I mean, they have to have some kind of  
5     assumption, but even looking at just a 2005 plan, and  
6     walking through the math, the example of this is the  
7     way in which we calculated it for that plan,  
8     accepting everything that she said, we aren't doing  
9     any of that projecting forward, well, we'll talk  
10    about that with Mr. Thomas, and we'll talk about some  
11    of the inputs that appear on the website, but even if  
12    we just look at a historic, you know, go back to  
13    2005, walk through the example. Show us how it is  
14    that you took this input, you made the calculation.  
15    You know, we compared it to the PGA. We updated it  
16    at some point. You know, at some point they had to  
17    actually have the inputs. When is it that they put  
18    in the inputs to decide whether it was winning or  
19    losing, and then, you know, here's the final  
20    calculation.

21                    You know, that's a reasonable request  
22    as to how it is that this works, and again, not only

1     did we have an agreement on it but we had an  
2     agreement that that would be an important way to be  
3     able to look at the model and to be able to better  
4     understand it, and just never received that  
5     information.

6             JUDGE ALBERS:   Okay.   And you're saying what  
7     you have given RGS, you believe they can plug in  
8     their own number and do the math.

9             MS. MUNSCH:   Correct.   We believe that we  
10    provided them the information to do what they would  
11    like to do which is test the accuracy of that  
12    statement from Mr. Thomas about the performance of  
13    the gas market monitor such that they can explore for  
14    themselves how much weight they feel the Commission  
15    should give that recommendation along with his other  
16    recommendations.

17             To the extent, you know, you basically  
18    just heard us discussing what should be discussed on  
19    Friday with Mr. Thomas, and those are the questions  
20    they're going to ask him then, and that's what we can  
21    explore then.

22             You know, to the extent that we

1 provided them what we feel they need to do, yes, we  
2 certainly do, we think we've been very responsive  
3 given that Mr. Thomas, in fact, based his expert  
4 opinion on a number of factors of which this  
5 statement was one.

6 MR. TOWNSEND: And again, at this point,  
7 certainly the cross-examination would be advanced if  
8 we could have an example ahead of time that we were  
9 working with as opposed to having to do that on the  
10 stand which, I mean, if that's the suggestion, then  
11 we're going to have to increase the amount of time  
12 for cross-examination.

13 The idea that we can't have a head  
14 start by having legitimate discovery that CUB has  
15 agreed to provide to us ahead of time, that's just  
16 not an efficient operation of a proceeding to start  
17 from scratch and try to build that up. Certainly  
18 we'd be advanced to be able to have something that  
19 says, okay, let's deal with this example.

20 JUDGE ALBERS: Okay. Well, I think we've got  
21 enough. I encourage you to try to come to some  
22 understanding, but in the meantime, Judge Yoder and I



1 will discuss the issue over lunch and give our  
2 response afterwards.

3 MS. MUNSCH: Thank you, Your Honors.

4 MR. TOWNSEND: Thank you.

5 MR. FLYNN: Judge, I've never asked for a break  
6 for a witness before he's answered the question "What  
7 is your name?", but Mr. Hevert has been sitting there  
8 dutifully for 45 minutes, and I think maybe just  
9 stretch his legs and clear his head a little before  
10 we start.

11 Also, I wondered if you could indulge  
12 me a couple of minutes on this question of internal  
13 labor and rate case expense. We're awaiting your  
14 official request but trying to anticipate what it is  
15 we should be doing so that we can answer most  
16 quickly.

17 We confess some confusion. The  
18 Commission's Schedule C10 and Part 285 defines rate  
19 case expense, both what we can ask for as outside  
20 attorneys and outside consultants, and there's a  
21 category for paid overtime, and I don't believe we've  
22 included any there, and my recollection from back

1     when I had a full head of hair is that there were a  
2     lot of Commission cases in the '70s and maybe even in  
3     the '80s in which the Commission specifically  
4     excluded internal labor from the rate case expense  
5     calculation, and I know there's a statutory provision  
6     now, 9-229, that requires the Commission to make  
7     certain findings which I have interpreted as a move  
8     by the General Assembly to direct the Commission to  
9     not simply rubber stamp whatever the utility puts in  
10    rate case expense but take a look at it, kick the  
11    tires and make specific findings.

12                   I don't know how all this plays into  
13    your desire to have us provide information, which  
14    we're happy to provide once we understand what it is  
15    we're supposed to be putting together, although I  
16    would also note that we're dealing with a future test  
17    year.

18                   So to the extent there is some concern  
19    about how much time our people spent on what in 2010  
20    and 2011, rates are going to be set based on  
21    forecasted 2012 labor rates and head count, and there  
22    really aren't any issues there at this point in the

1 case with respect to how many people we have or will  
2 have and what we'll be paying them.

3 All that said, if there's some area  
4 that we should be focused on right now while we have  
5 people who are ready to go focus on it so that we can  
6 answer whatever your request is when it comes out, we  
7 would appreciate any guidance.

8 JUDGE ALBERS: Okay. Well, I guess first  
9 things first.

10 Mr. Hevert, if you'd like to go  
11 stretch your legs, please feel free. Go ahead right  
12 now.

13 MR. HEVERT: I appreciate that.

14 JUDGE ALBERS: The ruling -- it would probably  
15 be coming out this morning hopefully, I sent it out  
16 to the clerk's office before coming down here --  
17 taking into account all the different ideas, many of  
18 which you've identified just now, we need a little  
19 more time to think about it basically, and that's why  
20 it's coming out this morning.

21 Basically, in reviewing the testimony  
22 of Mr. Stafford and Mr. Tolsdorf and their back and

1     forth regarding rate case expense, you know, in  
2     looking back at Section 9-229 which I think became  
3     effective in '09 got us thinking about whether or not  
4     9-229 is limited to a review of just external  
5     expenses associated with the rate cases, and so  
6     having the issue of rate case expense raised in  
7     testimony, we wondered if the Commission would then  
8     be interested in knowing what types of expenses for  
9     technical experts and attorneys which are the ones  
10    identified in 9-229, what type of expenses for those  
11    individuals were incurred in preparation for the rate  
12    case, and, yes, it's a future test year, and these  
13    individuals would have spent time on these issues in  
14    2010 and 2011.

15                   Setting here right now, I'm not sure  
16    how that would play out however which way it would go  
17    but thought maybe it would be useful to have the  
18    information rather than not have it as we think about  
19    it later, you know, figure out what to do about it if  
20    the Commission did raise the issue.

21                   I think hopefully that the ruling when  
22    it comes out will answer some of your questions, so

1     rather than try to paraphrase it now, I can wait, and  
2     when you see it, if you have any questions after  
3     that.

4             MR. FLYNN:   We will await the ruling.

5             JUDGE ALBERS:   Okay.   All right.   And if  
6     Mr. Hevert still needs some time to stretch his leg,  
7     we can recess for a couple of minutes.

8             MR. FLYNN:   Why don't we break for two minutes.

9                             (Recess taken.)

10            JUDGE ALBERS:   Back on the record.

11                           Starting down our witness list, our  
12     first witness is Mr. Hevert, so Mr. Flynn?

13            MR. FLYNN:   Yes.

14                           Were the witnesses sworn?

15            JUDGE ALBERS:   Not yet.   That's on my list of  
16     things to do.

17                           Would you stand and raise your right  
18     hand and anyone else that plans to testify today,  
19     will you please also do so?

20   (Whereupon the witnesses were  
21   sworn by Judge Albers.)

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ROBERT HEVERT

called as a witness herein, on behalf of Ameren  
Illinois Company, having been first duly sworn on his  
oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FLYNN:

Q. Good morning. Would you please state your  
name and spell it for the record?

A. My name is Robert Hevert spelled  
H-e-v-e-r-t.

Q. Mr. Hevert, by whom are you employed?

A. I am president of Concentric Energy  
Advisors of Marlborough, Massachusetts.

Q. And what are your duties and  
responsibilities as president of Concentric Energy  
Advisors?

A. I am responsible for the day-to-day  
management of the firm, developing the firm's  
capabilities within the practice areas in which we  
operate, and I also am responsible for providing  
client services such as expert testimony.

Q. And were you retained by Ameren Illinois

1 Company to provide expert testimony in this case?

2 A. Yes, I was.

3 Q. And did you provide expert testimony  
4 regarding electric delivery services rates?

5 A. Yes, I did.

6 Q. I show you a document previously marked as  
7 Ameren Exhibit 3.0E and ask if that's a copy of your  
8 direct testimony regarding electric delivery services  
9 rates?

10 A. Yes, it is.

11 Q. And is that testimony true and correct to  
12 the best of your knowledge?

13 A. Yes, it is.

14 Q. In the course of your electric direct  
15 testimony, did you identify and sponsor certain  
16 exhibits?

17 A. I did.

18 Q. I show you copies of what has been  
19 previously marked as Ameren Exhibits 3.1E through  
20 3.12E.

21 Are those copies of the exhibits that  
22 you sponsor and identify in your direct testimony?

1           A.    Yes, they are.

2           Q.    Were those exhibits prepared by you or  
3 under your direction and supervision?

4           A.    They were.

5           Q.    Do those exhibits accurately reflect what  
6 they purport to reflect?

7           A.    Yes, they do.

8           Q.    Did you also cause direct testimony to be  
9 submitted regarding gas delivery services?

10          A.    I did.

11          Q.    I show you a copy of what's been previously  
12 marked as Ameren Exhibit 3.0G. Is this a copy of  
13 your gas direct testimony?

14          A.    It is.

15          Q.    And is it true and correct to the best of  
16 your knowledge?

17          A.    Yes, it is.

18          Q.    I also show you a copy of a revised  
19 Appendix A to your direct testimony, 3.0G, which was  
20 filed on May 27, 2011.

21                   Is this a true and correct copy of  
22 your revised Appendix A?



1           A.    Yes, it is.

2           Q.    In the course of your gas direct testimony,  
3 do you identify and sponsor certain exhibits?

4           A.    I do.

5           Q.    I show you copies of what have been  
6 previously marked as Ameren Exhibits 3.1G through  
7 3.14G.

8                       Are these copies of the exhibits that  
9 you identify and sponsor in your gas direct  
10 testimony?

11          A.    Yes, they are.

12          Q.    And were these exhibits prepared by you or  
13 under your direction and supervision?

14          A.    Yes, they were.

15          Q.    Do they accurately reflect what they  
16 purport to reflect?

17          A.    They do.

18          Q.    I also show you a copy of what's previously  
19 been marked as Ameren Exhibit 23.0 Revised.

20                       Is this a copy of your revised  
21 rebuttal testimony in this case?

22          A.    It is.

1           Q.    In the course of your rebuttal testimony,  
2   do you identify and sponsor certain exhibits?

3           A.    I do.

4           Q.    I show you copies of what have been  
5   previously marked as Ameren Exhibits 23.1 through  
6   23.21.

7                   Are these copies of your rebuttal  
8   exhibits?

9           A.    Yes, they are.

10          Q.    Were they prepared by you or under your  
11   direction and supervision?

12          A.    Yes, they were.

13          Q.    Do they accurately reflect what they  
14   purport to reflect?

15          A.    Yes, they do.

16          Q.    I show you what's previously been marked as  
17   Ameren Exhibit 41.0.

18                   Is this a copy of surrebuttal  
19   testimony that you submitted in this presenting?

20          A.    Yes, it is.

21          Q.    Is this testimony true and correct to the  
22   best of your knowledge?

1           A.    It is.

2           Q.    Lastly, did you identify and sponsor  
3   certain exhibits in your surrebuttal testimony?

4           A.    Yes, I did.

5           Q.    I show you copies of what have been  
6   previously marked as Ameren Exhibits 41.1 through  
7   41.11.

8                       Are these copies of your surrebuttal  
9   exhibits?

10          A.    Yes, they are.

11          Q.    Were they prepared by you or under your  
12   direction and supervision?

13          A.    Yes, they were.

14          Q.    Do they accurately reflect what they  
15   purport to reflect?

16          A.    Yes, they do.

17          MR. FLYNN:  Judge, at this point, I would move  
18   for the admission of Mr. Hevert's direct testimony  
19   and exhibits, rebuttal testimony and exhibits, and  
20   surrebuttal testimony and exhibits and tender  
21   Mr. Hevert for cross-examination.

22          JUDGE ALBERS:  Any objections at this time?

1                   If not, we'll wait until the end of  
2 cross to consider admission.

3                   Who would like to go first?

4           MR. OLIVERO: Staff would, Your Honor.

5                   Good morning, Mr. Hevert. I think we  
6 got started a little later than we thought.

7                   My name is Jim Olivero, and I  
8 represent staff witnesses of the Illinois Commerce  
9 Commission.

10          THE WITNESS: Nice to meet you.

11                               CROSS-EXAMINATION

12 BY OLIVERO:

13          Q. To begin with, I'd like to direct your  
14 attention to your surrebuttal testimony, Ameren  
15 Exhibit 41.0, and direct your attention to page 21.

16          A. Yes, I have that.

17          Q. Okay. Do you see on that page a Table 3  
18 entitled "Summary of Long-Term Growth Rates"?

19          A. I do.

20          Q. In that table, you present the nominal GDP  
21 growth rate forecasted by Global Insight and EIA as  
22 5.2 percent, is that correct?

1           A.    Yes, that's correct.

2           Q.    And you also note a footnote to  
3   Ms. Freetly's direct testimony, ICC Staff Exhibit  
4   8.00 at page 9, is that correct?

5           A.    That is correct, yes.

6           Q.    Do you happen to have a copy of  
7   Ms. Freetly's testimony with you here today?

8           A.    I do.

9           Q.    If you wouldn't mind turning to page 9 of  
10   her direct testimony at lines 175 and 176.

11          A.    Yes, I see that.

12          Q.    Would you agree that Ms. Freetly states  
13   that the EIA forecasted nominal economic growth rate  
14   for the 2021 through 2035 time period is 4.5 percent?

15          A.    Yes, I agree with that.

16          Q.    And would you also agree that she states  
17   the Global Insight forecast of nominal economic  
18   growth rate for the 2021 through 2041 period is 4.4  
19   percent?

20          A.    Yes, I see that.

21          Q.    And so you would agree that the 5.2  
22   long-term GDP growth rate you attributed to Global

1     Insight and EIA on Table 3 should actually be 4.4 for  
2     the Global Insight and 4.5 for the EIA?

3             A.    I agree.  I apologize for that oversight.

4             Q.    All right.  Thank you.

5                     Now, for purposes of your DCF analysis  
6     that you conducted for your direct, rebuttal, and  
7     surrebuttal testimony, is it correct that your Stage  
8     1 growth rates were an average of the analysts'  
9     growth rate forecasts by Value Line, Yahoo and Zack?

10            A.    Yes.

11            Q.    Each company in the gas and electric  
12     samples?  I'm sorry.

13            A.    I didn't mean to speak over you.

14                     Yes, that's correct

15            Q.    And now for your direct testimony, what  
16     date did you obtain the Stage 1 growth great  
17     forecast?

18            A.    I don't recall offhand the date that they  
19     were accessed.

20            Q.    Would you have anything to refresh your  
21     memory as to when that was that you could look at?

22            A.    I was just quickly checking footnotes to

1     that exhibit to see.

2                                   (Pause)

3             A.    No.   I'm sorry.   It doesn't say the date on  
4     which it was accessed, although in the direct  
5     testimony, of course, the ending date of the analysis  
6     was December 31, 2010, but I don't know offhand as I  
7     sit here the date on which we accessed those growth  
8     rates, although typically it's the practice to be  
9     concurrent with the end date of the analytical  
10    period.

11            Q.    If I were to ask you with regard to your  
12    rebuttal testimony what date did you obtain the Stage  
13    1 growth rate forecast, would you have that  
14    information or would you have that?

15            A.    Well, let me check my footnotes.   There  
16    again, I don't know that the footnote would say the  
17    specific date on which it was acquired.   Here again,  
18    the end of the analytical period was June 30, 2011,  
19    and again, given our convention of getting growth  
20    rates generally concurrent with the end date of the  
21    period, I would imagine it was quite close to  
22    June 30th, but I don't have that date offhand or that

1       number offhand.

2               Q.    Okay.  And if I could back up just for a  
3       moment.

4                       With regard to the direct testimony,  
5       what would be the end date of that analytical period?

6               A.    That was December 31st.

7               Q.    December 31st of 2010?

8               A.    Correct.

9               Q.    And finally, with regard to your  
10       surrebuttal testimony, do you know what date you  
11       obtained the Stage 1 growth rate forecast?

12              A.    Well, it would be generally the same  
13       answer.  The cutoff date for the data there was  
14       August 19th.  Again, I would imagine it was quite  
15       concurrent with that.  I don't know that I have the  
16       specific date as I sit here although it's certainly  
17       something I can get.

18              Q.    Thank you, Mr. Hevert.

19                      Are you familiar with the Blue Chip  
20       long-range interest forecast?

21              A.    I am aware that Blue Chip produces several  
22       forecasts of interest rates.  The Blue Chip economic



1 indicators projects long-term, long-term being  
2 defined by reference to the ten-year Treasury yield,  
3 for about a five-year period. The long-term  
4 financial forecast will project the 30-year Treasury  
5 yield for a longer period.

6 But, yes, there are two versions of  
7 Blue Chip reports. Certain numbers speak to the  
8 ten-year Treasury. Certain numbers speak to the  
9 30-year Treasury.

10 Q. So you are familiar with the Blue Chip  
11 long-range interest forecast?

12 A. Yes, I am. Sorry.

13 Q. Do you know how often Blue Chip updates its  
14 long-range forecast?

15 A. Twice a year as I recall.

16 Q. If you know, can you tell us what the  
17 current rate is on 30-year U.S. Treasury bonds?

18 A. The 30-year Treasury is now in the mid 3,  
19 upper 3 percent range depending upon the day.

20 Q. And do you think the current yield on  
21 30-year U.S. Treasury bonds will persist over the  
22 next five to ten years?

1           A.    I don't have a view on that.

2           Q.    Now, do you agree that investors are  
3 generally concerned about company earnings?

4           A.    I think -- well, I wonder if you could  
5 perhaps elaborate on your question.  What is it about  
6 company earnings?

7           Q.    Well, isn't it true that investors monitor  
8 earnings expectation for companies and company  
9 earnings announcements?

10          A.    Yes, I would agree with that.

11          Q.    All right.  And would you agree that stock  
12 prices react to earnings announcements?

13          A.    They may.

14          Q.    Are you familiar with the term earnings  
15 guidance?

16          A.    I am.

17          Q.    Would you agree that the phrase earnings  
18 guidance refers to a company's public announcement of  
19 its forecast of its earnings for the current or next  
20 fiscal year?

21          A.    I think the term earnings guidance is more  
22 a term of art than a defined term.

1           Q.   Well, then how would you I guess define  
2 earnings guidance?

3           A.   Each companies have different policies,  
4 different strategies with respect to earnings  
5 guidance. Some companies flat out do not give  
6 earnings guidance where some companies may provide  
7 projections of the coming year, the coming quarter,  
8 ranges of expected earnings. Some companies may  
9 provide more fulsome reasons of why they believe the  
10 range that they've provided is reasonable.

11                   And so there are many aspects that go  
12 into the notion of earnings guidance and it can vary  
13 considerably company by company.

14           Q.   Do you know what method or methods would a  
15 company use to make an earnings guidance  
16 announcement?

17           A.   I would not speculate on that.

18           Q.   So you wouldn't know whether an  
19 announcement might be in a press release or on a Web  
20 page?

21           A.   Oh, I'm sorry. I thought you were speaking  
22 to underlying reasons for earnings guidance.

1                   They can use any number of media.

2           Q.    Are you familiar with seeing them as a  
3   press release or on a Web page?

4           A.    Yes.

5           Q.    Now, isn't it true that you conduct an  
6   event study to determine whether investors reduced  
7   their return requirements for Detroit Edison or  
8   Michigan Consolidated Gas in the expectation that  
9   those utilities would be authorized to implement  
10   uncollectible account riders?

11          A.    I somewhat disagree with the premise.

12                   The purpose of the event study was to  
13   test Ms. Freetly's proposition that the effect of the  
14   uncollectible riders essentially would result in a  
15   full letter grade change in a company's credit  
16   rating, and that, of course, is a very meaningful  
17   event, and a meaningful event of that magnitude  
18   should be discernible in market data. That was the  
19   premise and the purpose of the study.

20          Q.    Mr. Hevert, isn't it true that in your  
21   direct testimony, Ameren Exhibits 3.A and 3.G, you  
22   discuss the event study prior to the time Ms. Freetly

1 actually filed any testimony?

2 A. In this case, yes.

3 Q. And didn't that discuss the event study  
4 which I was referencing with regard to the return  
5 requirements for Detroit Edison and Michigan  
6 Consolidated Gas?

7 A. Yes.

8 Q. So isn't it true then that you actually  
9 undertook this before Ms. Freetly I guess raised it  
10 in her testimony, correct?

11 A. Well, I believe in my direct testimony we  
12 had reviewed Ms. Freetly's testimony in prior  
13 proceedings and so we had an understanding of the  
14 methodology.

15 Q. So you're saying not related to this Ameren  
16 hearing you had looked at Ms. Freetly's testimony on  
17 other dockets?

18 A. Yes, to try to understand the purpose of --  
19 excuse me. Let me restate that. To try to get a  
20 sense of whether or not an uncollectible rider would  
21 have a material effect on investors return  
22 requirements.

1           Q.    Would you agree, Mr. Hevert, that DTE  
2   Energy is the parent company of Detroit Edison and  
3   Michigan Consolidated Gas?

4           A.    Yes.

5           Q.    In your event study, you analyze the  
6   returns of DTE Energy, the parent company, relative  
7   to the industry's specific indices, is that correct?

8           A.    That is correct, yes.

9           Q.    Would you agree that the approval of the  
10   uncollectible account riders for MichCon and Detroit  
11   Edison came within the rate cases in which the  
12   Michigan Public Service Commission authorized a rate  
13   increase for the utility companies?

14          A.    I believe that's true, yes.

15          Q.    And just for clarification, Detroit Edison  
16   uncollectible account rider was adopted in the rate  
17   case order which I think in your testimony was  
18   identified as being entered January 11, 2010 in  
19   Docket C-U-15768?

20          A.    I'm not very good with numbers so I'd have  
21   to go back and check that.

22          Q.    If I could direct your attention to AIC, at

1       least this is what I had, 23 on page 59.

2               A.     Exhibit 23?

3               Q.     Yeah.   That was the one that I had.   23

4   Revised.   I'm sorry.

5               MR. FLYNN:   I'm sorry.   Which page?

6               MR. OLIVERO:   59.

7               THE WITNESS:   I'm sorry.   Could you give me the

8   reference one more time?

9               MR. OLIVERO:   Ameren Exhibit 23 Revised, page

10   59.

11              THE WITNESS:   I have it.   All set.

12              Q.     Would you agree with that statement?

13              A.     Yes.   I'm sorry for delaying that.

14              Q.     No.   That's all right.   A lot of papers.

15              A.     And I apologize for that too.

16              Q.     Based upon the details you used in your

17   event study, is it correct that you are familiar with

18   that Detroit Edison order?

19              A.     I was familiar with the date of the order.

20   I have to say I couldn't sit here today and tell you

21   the specific details of the order but generally

22   familiar, yes.

1           Q.    So you haven't read the complete order?

2           A.    As I sit here today, I can't recall what

3   the specifics of the complete order were.

4           Q.    But you have read it at some time?

5           A.    I've reviewed the order.  It's been quite

6   some time.

7           Q.    Okay.  In the Detroit Edison rate case,

8   isn't it true that Detroit Edison proposed to reduce

9   the return on equity by 25 basis points if the

10   Michigan Public Service Commission authorized the

11   revenue to coupling mechanism and the uncollectible

12   tracking mechanism?

13          A.    I believe that to be true, yes.

14          Q.    I'm sorry?

15          A.    I believe that to be true.

16          Q.    Do you know how many times during the

17   course of a MichCon rate case did DTE Energy announce

18   quarterly earning results and issue earnings

19   guidance?

20          A.    I don't know that.

21          Q.    And would you know how many times during

22   the course of the Detroit Edison rate case that DTE



1     Energy announced quarterly earnings results and  
2     issued earnings guidance?

3             A.    I don't know that either.  It certainly was  
4     not something that was important to my analysis.

5             Q.    Do I understand correctly that your event  
6     study covered the time period from the midpoint of  
7     each proceeding through 30 days post order date?

8             A.    Well, there were, as you probably recall,  
9     several versions of the study.

10                   One of the final versions of the  
11     study, yes, that's correct.  The start date was the  
12     filing date.  There was the order date.  The event  
13     date was the midpoint of the two.  One of the last  
14     analyses that we did was to extend the end, the post  
15     period, 30 days after the order date.

16             Q.    Thank you.

17                   Did DTE issue earnings guidance for  
18     2009 on October 19, 2009?

19             A.    I don't know that.

20             Q.    Do you know, was an earnings guidance ever  
21     announced by DTE Energy?  Did you ever check on that?

22             A.    No.  Again, it was not something that I

1 considered important to my analysis.

2 MR. OLIVERO: Your Honor, I think that's all we  
3 would have for cross right now except I would like to  
4 at least put on the record that Ameren and staff  
5 agreed that certain work papers of Mr. Hevert and a  
6 data request response would be put into the record,  
7 and I would just like to at least identify those for  
8 now and make sure that I've got the correct ones, and  
9 then we'll go ahead and just file this electronically  
10 if that's all right with Ameren.

11 JUDGE YODER: Would it be filed as a staff  
12 cross exhibit?

13 MR. OLIVERO: Yes.

14 JUDGE YODER: All right.

15 MR. OLIVERO: And I thought if it was not a  
16 problem, we'd just do it as one cross exhibit which I  
17 believe -- is 11 is the next one?

18 JUDGE YODER: That would be correct.

19 MR. OLIVERO: Okay. And there will be a work  
20 paper titled "Uncollectible Event Study, MichCon  
21 Financial Data."

22 The second one would be an

1 uncollectible event study --

2 JUDGE ALBERS: Slow down.

3 The first one was Uncollectible Event  
4 Study, MichCon?

5 MR. OLIVERO: MichCon Financial Data.

6 JUDGE ALBERS: The second one?

7 MR. OLIVERO: The second one was Uncollectible  
8 Event Study, DTE Financial Data.

9 The next one doesn't really have a  
10 title at the top but it involves Detroit Edison  
11 Company and Michigan Consolidated Gas Company, the  
12 prices of returns, and it's a five-page document.

13 JUDGE ALBERS: That's a work paper?

14 MR. OLIVERO: Yes, another work paper, correct.

15 JUDGE ALBERS: It's Detroit Edison and --

16 MR. OLIVERO: MichCon, Michigan Consolidated.

17 And then finally is a data request  
18 response JF 7.03, and the response was prepared by  
19 Mr. Robert Hevert, and it involves a response and  
20 then three separate attachments.

21 JUDGE ALBERS: Okay.

22 MR. FLYNN: And do you have a copy of that for

1       us?

2               MR. OLIVERO:   I'm sorry?

3               MR. FLYNN:   Do you have a copy of that for us?

4               MR. OLIVERO:   Yes.

5                       And then we would move for admission

6       into the record.

7               JUDGE ALBERS:   Any objection to that cross

8       exhibit?

9                       Hearing none, then Staff Cross

10      Exhibit 11 is admitted.

11                               (Whereupon Staff Cross Exhibit

12                               11 was admitted into evidence at

13                               this time.)

14               JUDGE ALBERS:   Okay.   The next party to

15      question Mr. Hevert?   Mr. Reddick?

16               MR. REDDICK:   Thank you, Your Honor.

17                       Good morning, Mr. Hevert.   My name is

18      Conrad Reddick, and I represent the Illinois

19      Industrial Energy Consumers.

20               THE WITNESS:   Good morning.

21

22

1 CROSS-EXAMINATION

2 BY MR. REDDICK:

3 Q. A few preliminary matters before we go to  
4 the heart of your testimony.

5 Are you aware that this Commission  
6 must base its decisions on the record before it?

7 A. Yes, I would agree with that.

8 Q. And that's an approach you're familiar with  
9 and agree with?

10 A. It's an approach I'm familiar American with  
11 and is very customary.

12 Q. I'm sorry. I didn't hear you.

13 A. And is very customary.

14 Q. And you don't disagree with that approach,  
15 do you?

16 A. That a decision should be based on record  
17 evidence?

18 Q. Correct.

19 A. I do not disagree with that.

20 Q. And do you agree that different utilities  
21 in their own rate cases will present information  
22 that's relevant to that particular utility?

1           A.    I'm sorry.  Can you clarify that question?

2           Q.    In a rate case for utility A, that utility  
3 will present evidence relevant to utility A as  
4 opposed to utility B?

5           A.    Well, there may be utility B and there may  
6 be utility C and D as in the case of cost of capital  
7 testimony which rely on proxy companies.

8           Q.    Okay.  And depending on the evidence  
9 presented by a utility, the parties in that case may  
10 address issues defined by the evidence presented?

11          A.    I'm so sorry but I wonder if you could  
12 clarify that again.

13          Q.    I'll rephrase it, see if I can make it  
14 clearer.

15                    You agree that the parties in a case  
16 will present evidence that responds to the specific  
17 testimony presented by the utility?

18          A.    Yes, I agree with that.  That has happened  
19 here.

20          Q.    And from case to case, parties would  
21 present different evidence depending on what had gone  
22 before and the utility's case in chief?

1           A.    I agree with that.

2           Q.    And depending on the information in the  
3   record, the Commission might be compelled to reach a  
4   conclusion different from a conclusion that it might  
5   reach on information outside the record?

6           A.    I'm sorry.  Is your question that a  
7   commission would render a decision based on  
8   information not in the record?

9           Q.    I'll rephrase the question.

10                   Might a commission decision based on  
11   the record be different from a conclusion the  
12   Commission might reach if it had available to it  
13   information that is not in the record?

14           A.    I just want to be sure I understand your  
15   question.

16           Q.    Okay.

17           A.    So you're saying that if the record was  
18   something other than what it actually was, could the  
19   Commission have rendered a different decision?

20           Q.    All right.  Piece by piece.

21                   If the record contains facts A, B and  
22   C and the Commission issued a decision on facts A, B

1     and C, might that decision be different from a  
2     decision rendered on facts A, B, C, D, and E, D and E  
3     not being in the record?

4             A.    Let's go back to one of your first  
5     questions.

6             Q.    Okay.

7             A.    The Commission is going to render a  
8     decision based on evidence in the record.

9                     So I still apologize but I'm still  
10    struggling with the notion, with the premise of your  
11    question that the Commission will render a decision  
12    based on information not in the record.

13            Q.    And you're correct to do so. Logical  
14    rigor. I like it.

15                    Okay. Commission renders a decision  
16    on facts A, B and C. Might that decision be  
17    different from the decision the Commission rendered  
18    on facts A, B, C, D and E if D and E were in the  
19    record?

20            MR. FLYNN: Objection to going down this road.

21            JUDGE ALBERS: Why did you wait until now?

22            MR. FLYNN: I did because I like Mr. Reddick,



1 and I generally want to get along and make the  
2 proceedings move forward and not get tied up in a lot  
3 of arguments over objections and questions, and I  
4 hoped that everything would kind of start to tie up  
5 and we're not there.

6                   Mr. Hevert is here as an expert on  
7 utility cost of capital. Yes, he has been in  
8 regulatory proceedings before but that does not make  
9 him a lawyer or a legal expert, and I interpret  
10 counsel's questions as going to what may the  
11 Commission legally do with a record before it, what  
12 may it legally do with information that is not before  
13 it.

14                   That is not within the scope of  
15 Mr. Hevert's expertise; at least he's not being  
16 offered for that. Therefore, the question is  
17 objectionable, and I am now stating that objection;  
18 that these questions call for legal conclusions, and  
19 that's not what Mr. Hevert is here for.

20                   And to the extent that IIEC has a  
21 particular legal theory that it wishes to pursue in  
22 this case with regard to Mr. Hevert's testimony or

1     anyone else's, they have a remedy which is a brief  
2     which we are all going to file after the conclusion  
3     of the hearing.

4             JUDGE ALBERS:   Your response?

5             MR. REDDICK:   No legal questions involved.   The  
6     questions were factual, and my next question will tie  
7     up I hope where I was going.

8             MR. FLYNN:   Well, I disagree.   I let it go, and  
9     the questions, although getting rephrased, would the  
10    Commission be compelled to issue a decision.  
11    Compelled, that is a legal matter what the Commission  
12    is compelled to do, so I repeat my objection.

13            JUDGE ALBERS:   All right.   I'm going to allow  
14    the question.   I'm assuming you can tie it up, so  
15    let's hear the next question and if you want to renew  
16    it after that.

17                    Wrap it up I guess is the underlying  
18    theme here.

19            Q.   BY MR. REDDICK:   Mr. Hevert, if the  
20    Commission addressed the same issue in a series of  
21    cases, might its decision be different in each of  
22    those cases based on the record in each of those

1 cases?

2 A. For a given issue, and again, I'm not  
3 offering a legal opinion of course but...

4 Q. I don't want one.

5 A. Well, that's good because you'd be getting  
6 what you paid for.

7 If for a given issue the record  
8 changed from case to case, then, yes, it's possible  
9 the decision could differ based on the fact that the  
10 record is different.

11 Q. Do you agree that the function of proxy  
12 groups is to provide market determined stock and  
13 dividend figures from public companies comparable to  
14 a target company for which those figures are  
15 unavailable?

16 A. Not entirely. I agree that the purpose of  
17 a proxy group is to develop a group of risk  
18 comparable companies knowing that investors have  
19 alternatives.

20 But as to the second part of your  
21 question, it may be a company has publicly traded the  
22 data or stock or provides dividends, in which case

1 the use of a proxy group still is relevant.

2 Q. Would you turn to your direct testimony,  
3 line 348?

4 A. I'm sorry. Which direct testimony?

5 Q. Electric.

6 A. Okay. And, I'm sorry. Line number?

7 Q. 348.

8 A. Okay.

9 Q. And is that a part of the quotation you've  
10 included from a U.S. Court of Appeals decision?

11 A. Yes.

12 Q. And so you do not agree totally with that  
13 statement. You would augment that statement with the  
14 qualification you've made?

15 A. My only point was that there are at times  
16 subject companies that themselves have publicly  
17 traded information and yet their use of a proxy group  
18 is appropriate. I didn't say I disagree with the  
19 statement.

20 Q. Okay. Do you consider the equity market an  
21 economically efficient mechanism, that is, a  
22 mechanism that absorbs and acts on information in an

1 economically rational manner?

2           A. As you probably know, there are many  
3 theories of market efficiency. There's weak  
4 efficiency and there's strong efficiency and there's  
5 semi-strong efficiency. The issue goes to the speed  
6 and extent to which information is incorporated in  
7 the stock price of a given company.

8                   The question as to efficiency is a  
9 very broad one, so, again, I'm not entirely sure what  
10 you're asking. Which form of efficiency are we  
11 talking about here?

12           Q. Which do you consider the equity markets to  
13 be?

14           A. Which do I consider the equity markets to  
15 be? I consider the equity markets to be myself  
16 what's typically referred to as semi-strong  
17 efficient.

18           Q. And define semi-strong.

19           A. In that case, it means that there still is  
20 the opportunity for an investor to earn returns  
21 greater than that of the market based on the  
22 investor's own analysis.

1                   In a perfectly strong and perfectly  
2   efficient market, there is no opportunity to exceed  
3   returns.

4           Q.   Do you agree that as a result of the market  
5   mechanism, data from equity market transactions are  
6   reliable indicators of the information that is  
7   available to the market?

8           A.   I'm sorry.  I don't know what you mean by  
9   transactions.  What type of transactions are we  
10   talking about?

11          Q.   Equity transactions.

12          A.   I understand that but what --

13          Q.   Buying and selling stock.

14          A.   Okay.  With that clarification, can you  
15   repeat your question?

16          Q.   Do you agree that data from equity market  
17   transitions is reliable information that is available  
18   to the market?

19          A.   The question is are stock prices generally  
20   reflective of information available to the market, is  
21   that your question, because stock prices are, of  
22   course, the end result of the transactions as you've

1 defined them.

2 Q. And are the stock prices reliable  
3 indicators of the information that is available to  
4 the market?

5 A. I would say they are reliable indicators of  
6 information that's available, yes.

7 Q. I sense a qualification in your response.  
8 I'd like to hear it. What is the qualification?

9 A. Your question was the information, and as I  
10 noted earlier, there are three forms of market  
11 efficiencies. The information to me would encompass  
12 all information available.

13 To the extent that there's information  
14 available that is not necessarily incorporated in  
15 prices and again gives rise to the opportunity for an  
16 investor to earn returns greater than the market,  
17 then there may be some information not currently  
18 reflected in prices, but it's that simple distinction  
19 I was making earlier between semi-strong and strong  
20 market efficiency.

21 Q. I understood your earlier distinction to be  
22 the strength of an individual investor's analysis of

1 information as opposed to information that wasn't  
2 included.

3 Are you saying there is an opportunity  
4 because of an individual investor's superior analysis  
5 as well as information that's not taken account of in  
6 the price?

7 A. I don't make a distinction between the  
8 analysis. An analysis comes in many forms.  
9 Information comes in many forms. There's something  
10 referred to as the mosaic theory of investment being  
11 that an investor will look at multiple pieces of  
12 information that may appear on the face to be  
13 somewhat disjointed but as you pull them together it  
14 develops a picture, so the analysis and the use of  
15 information in my mind are not distinguishable.

16 Q. Do you agree that market determined stock  
17 figures reflect a company's risk level and combined  
18 with dividend values allow you to calculate the risk  
19 adjusted expected rate of return that's sufficient to  
20 attract investors?

21 A. Well, I think I'm going to have to break  
22 that down into a few parts if that's okay.



1 Q. Okay.

2 A. Stock prices reflect information.

3 Q. Well, maybe I can save some time. Would  
4 you look at line 351 of your testimony, direct?

5 MR. FLYNN: Electric or gas?

6 MR. REDDICK: Electric. I won't make any  
7 references to the gas this morning.

8 JUDGE YODER: Which line?

9 MR. REDDICK: 351.

10 THE WITNESS: Yes, that's there.

11 Q. BY MR. REDDICK: Okay. And you were, as I  
12 understood or what I heard, you were about to offer a  
13 qualification or an addendum to that statement.

14 A. I wasn't going to qualify it at all. I was  
15 just going to explain.

16 The issue, of course, is that there  
17 are several models that are used to calculate the  
18 expected rate of return, the required rate of return.  
19 Some use stock prices and dividends. Some use stock  
20 prices only. Some use other factors. So it's a  
21 distinction but...

22 Q. Okay. I understand.

1                   At various places in your testimony,  
2   you refer to non-price measures of investor attitudes  
3   or what you call risk sentiment.

4                   Is that an accurate characterization  
5   of your testimony first before we go to a question?

6           A.    I really hate to be picky, but I would  
7   agree that there are nonstock price indicators there.  
8   Interest rates are a price.

9           Q.    Okay.

10          A.    Credit spreads are a price.

11          Q.    Is it your testimony then that models that  
12   rely on stock price are not in themselves adequate to  
13   accurately estimate the market required returns?

14          A.    I think all of the -- no, that's not my  
15   testimony. All of the -- many of the models that are  
16   used, discounting cash flow model, capital asset  
17   pricing model, depend upon stock prices in some form  
18   or fashion.

19                   Other models, risk premium model, does  
20   not necessarily depend upon the observed stock price  
21   in the first instance. For example, I have an  
22   analysis on risk premium that we look at which is a

1 function of authorized returns relative to interest  
2 rates.

3                   On its face in the first instance,  
4 stock prices are neither of the two inputs. Of  
5 course, authorized returns themselves are derivative  
6 of stock prices because, as we just said, the capital  
7 asset pricing model and discounted cash flow model  
8 depend upon stock prices.

9                   And so I don't mean to belabor the  
10 point but depending upon the layer of analysis that  
11 we're looking at, perhaps they include stock prices,  
12 perhaps they don't, but I would agree that the  
13 primarily models, the discounted cash flow model  
14 capital asset pricing model used here are dependent  
15 upon stock prices.

16           Q. And the question is whether you think those  
17 models are adequate to define a market required cost  
18 of equity.

19           A. My view is that it's important to use  
20 multiple approaches, and my view also is that it's  
21 important to look at a lot of market information to  
22 get a sense of the reasonableness of results.

1                   We spoke earlier about the mosaic  
2   theory. That speaks to this particular issue. It's  
3   very important to use multiple models. Any one model  
4   may give results that do not make sense in the  
5   context of the current environment. In that case,  
6   it's important to use multiple models, but even with  
7   that, it's important to look at other measures that  
8   are not necessarily direct inputs to those models to  
9   get a sense of the reasonableness of the results.

10                  We cannot -- in my view, it is  
11   extraordinarily difficult to simply take model  
12   results, look at them in a vacuum, not have any  
13   context as to current market conditions or, in the  
14   case of capital asset pricing model, how those market  
15   conditions affect the inputs to the model.

16           Q. Did I understand your answer to be, no,  
17   those two models are not adequate in and of  
18   themselves to define the market required cost of  
19   equity?

20           A. Those two models are dependent upon --  
21   those two models are models that are often relied  
22   upon, typically relied upon in regulatory

1     proceedings. In my view, in my view, it is always  
2     important to understand both the inputs of the model  
3     and the results of the model in the context of the  
4     overall market.

5                     In my view, I do not believe it's  
6     reasonable simply to take the results of models and  
7     not question the inputs, not question the  
8     relationships among the inputs, and not understand  
9     the reasonableness of the results within the context  
10    of the overall market.

11                    So, as a general matter, I do not  
12    agree that you can just take a model, take the  
13    results and call it a day.

14            Q. And going back to the other indicators that  
15    you discuss in your testimony, you describe them as  
16    observable measures of instability and risk aversion,  
17    am I correct?

18            A. In the current market, that's what they  
19    indicate, yes.

20            Q. And I think the non-price observable  
21    measures that I got from your testimony were  
22    volatility, risk aversion, and uncertainty.

1           A.   And again, the only clarification I would  
2   make to that is that while those are in some measure  
3   dependent upon prices, they're not stock price  
4   dependent for the most part. Volatility, of course,  
5   is a function of the stock prices.

6           Q.   And do you contend then that these  
7   observable measures have not been taken into account  
8   by investors making the buy and sell transactions  
9   that set equity prices?

10          A.   No.

11          Q.   Did your assessment of the observable  
12   measures of volatility risk aversion uncertainty  
13   affect the recommendation you made in this case?

14          A.   They help me give context to understanding  
15   the reasonableness of my results. In some instances,  
16   those measures did affect the inputs to the models.  
17   For example, in my capital asset pricing model  
18   application, volatility and expected volatility is a  
19   direct input, so in that regard, it directly affected  
20   the results.

21          Q.   Did those factors affect -- I'm sorry. Let  
22   me rephrase.

1                   Did those factors lead you to modify  
2   the results of any of the models you presented in  
3   this case? To clarify, not affecting the input but  
4   affecting the output.

5           A. I don't understand your question. If they  
6   affected the input, by definition, they would affect  
7   the output.

8           Q. Did any of those factors cause you to  
9   modify what would have been the recommendation based  
10   solely on the model results?

11          A. The model results as you've probably seen,  
12   are presented in my testimony, and my method of doing  
13   this type of work is to present a range of estimates.  
14   The range of estimates are the results of the inputs  
15   of the models.

16                   The question then becomes where do you  
17   set, where do you think a reasonable rate of return  
18   is within that range of results, and as I look at the  
19   market data and as I look at the current level of  
20   instability and as I look at those measures which are  
21   far different than many of the historical  
22   relationships, it seems to me that we're still in a

1     very, very unstable market, and, of course, unstable  
2     markets tend to be associated, well, they don't tend  
3     to, they are, associated with higher return  
4     requirements.

5                     At the end of the day, my  
6     recommendations generally are at the midpoint of the  
7     ranges that I suggest, and in that regard, because I  
8     did incorporate some level of instability by virtue  
9     of a forward VIX, the forward volatility estimate, it  
10    did affect the range of results, but I did stay at  
11    the midpoint of my range in my final recommendation,  
12    notwithstanding what I think is a relatively volatile  
13    market.

14            Q.    So these factors that we're observing, the  
15    observable measures of instability and risk aversion,  
16    would not operate to override the results of the  
17    models but they would refine your recommendation  
18    within the range defined by the models?

19            A.    Let me be clear one last time, well,  
20    probably for the first time actually, but some of  
21    those measures are direct inputs to the models as  
22    we've discussed, and so the output is a function of



1 the input.

2 But, no, I did not, for example, I did  
3 not change any of the other inputs to the discounted  
4 cash flow model as a result of looking at these  
5 market indicators.

6 Q. And that same answer would apply to the  
7 outputs. You did not change the outputs as a result  
8 of your assessment.

9 A. Correct.

10 Q. Okay. But you did use your own assessment  
11 of the, I think the word you used was context, market  
12 context to help you define where within the range you  
13 would make a recommendation?

14 A. It did two things. One is it helps me  
15 understand whether or not the range is reasonable and  
16 secondly, whether or not my placement within the  
17 range is reasonable.

18 Q. And as I understand your testimony, that is  
19 largely a matter of judgment; that is, there is no  
20 model like a DCF or a CAPM that would take these  
21 observable indicators and translate them directly  
22 into a market required return?

1           A.   Well, I somewhat disagree with the premise.  
2   Every model has an element of judgment, and that  
3   element of judgment speaks to the growth rates that  
4   are used, the data point, the timing of the data that  
5   you use. You cannot divorce judgment from the  
6   applications of models. So no matter what you do,  
7   there's an application of judgment.

8           Q.   Right. And judgment in the DCF or the CAPM  
9   is combined with a mathematical formula that gives  
10   you market required return estimate.

11                   For the others that you discussed in  
12   your testimony, there is, to my knowledge, no such  
13   formula to translate into a market required return.

14           A.   I will say that in the context of  
15   regulatory proceedings, now, again, but for my  
16   specific use of expected volatility in the capital  
17   asset pricing model, I would agree with that.

18                   There are other models that are used  
19   beyond regulatory proceedings that may consider these  
20   factors.

21           Q.   I think we can spare ourselves that.

22           A.   I think that would be a very good decision.

1           Q.    Is one of the measures, the observable  
2   measures that you take into account as something you  
3   say investors look at the returns authorized by other  
4   commissions and for other utilities?

5           A.    Yes.

6           Q.    And you are aware that this Commission has  
7   not been enamored of such comparisons?

8           A.    I understand and certainly respect the  
9   Commission's view.

10          Q.    With that in mind, are you asking the  
11   Commission to use the comparisons you present as a  
12   standard for determining the adequacy of Ameren's  
13   cost of equity recommendations?

14          A.    No.   And as I mentioned in my testimony,  
15   the risk premium analysis that I've included is a  
16   corroborating method.  It's not a primary method  
17   because I understand the Commission's preference.

18                   I do think that...

19          Q.    I'm sorry.  You said risk premium?

20          A.    Yes.

21          Q.    Did I misspeak my question?  Did I say risk  
22   premium?

1           A.    I'm sorry.  I assumed that you were  
2   familiar with the fact that my risk premium model is  
3   a function of authorized returns.

4           Q.    Perhaps I misunderstood your testimony.  It  
5   was my impression, correct me if I'm wrong, that you  
6   looked at the authorized returns for other utilities  
7   as a part of your context, not simply as an input to  
8   your model.

9           A.    I'm sorry.  Yes, I agree with that.  Well,  
10  I agree that that's what I did.

11          Q.    Yes.  That's all I was trying to say.

12          A.    Okay.

13          Q.    And in presenting that evidence, is it your  
14  intention that the Commission's decision-making  
15  regarding Ameren's cost of equity be affected by  
16  those comparisons?

17          A.    I think in, as I said in my testimony,  
18  because the financial community does consider those  
19  types of returns and, as I'd mentioned earlier in our  
20  conversation here this morning, investors do look at  
21  multiple pieces of information, I think that that  
22  type of information is relevant to investors, and

1 given that the role of cost of equity witnesses is to  
2 estimate the return required by investors that it's a  
3 relevant data point.

4 That said, I want to be clear, as I  
5 said in the testimony, it is not my view that the  
6 Commission should be bound by any one decision. I  
7 understand that certain cases can have provisions  
8 that would affect the returns but, on the other hand,  
9 looking at multiple decisions over a period of months  
10 or years, provides information as to a reference  
11 point.

12 Q. And is it your view, especially as to  
13 returns authorized over a period of years, that  
14 investors have not taken those returns into account  
15 in establishing the stock prices?

16 A. I believe that investors are aware of  
17 authorized returns, yes.

18 Q. And presumably were taken into account when  
19 they buy or sell stock?

20 A. I agree with that. It's part of the  
21 information that's available.

22 Q. The nonstock price factors that you discuss

1 in your testimony generally increase the recommended  
2 return on equity.

3 Rephrase, let me rephrase.

4 The ones that you discussed, if taken  
5 into account, would tend to increase a recommended  
6 market required return?

7 A. Well, I'll try for a second time to be  
8 clear. The indicators simply are market metrics and  
9 in my view there are two important elements of those  
10 metrics. One is their current and expected level  
11 relative to long-term levels and then the second is  
12 the relationship among the parameters, the variables  
13 to each other in the current market relative to sort  
14 of normal relationships.

15 And by way of example, we look at the  
16 relationship between dividend yields and Treasury  
17 yields being inverted at this point. That's  
18 something that typically does not happen, and it  
19 certainly does not persist for as long as it's  
20 persisted now or hasn't in the past, and so that is a  
21 measure of instability in the market.

22 Q. Are you aware of any measures in the

1 current environment that flipped in the opposite  
2 direction, that would tend to decrease the market  
3 return, required return?

4 A. I think the current market is a very  
5 unstable, very volatile market, and instability and  
6 volatility tend to again be associated with higher  
7 required returns.

8 Q. In your testimony, you comment on the  
9 effect of the federal government's intervention in  
10 the financial markets, and you contend that, and I'll  
11 quote from your testimony, "Federal intervention in  
12 the capital markets has created additional  
13 uncertainty." (Surrebuttal 128)

14 A. Oh, I'm sorry, line 128. I didn't think my  
15 surrebuttal went on that long.

16 Yes, I have that.

17 Q. Are you suggesting there that the cost of  
18 equity investments would be lower if the federal  
19 government had not intervened?

20 A. What I'm suggesting here are two things.  
21 One is that the mere fact that the federal government  
22 had to intervene in the capital markets in such a

1 material way suggests again a level of instability.

2 Secondly, there just is a continued  
3 level of uncertainty in the capital markets, and  
4 that's what we say on lines 131 to 134. The  
5 uncertainty lends itself to simply not knowing what  
6 the nature, what the effect, what the strategy of  
7 future federal intervention will be, and then perhaps  
8 even more to the point, what the effect of that  
9 intervention might be.

10 It's still unclear, for example,  
11 whether or not quantitative easing really wound up  
12 reducing long-term Treasury rates to the extent that  
13 the Federal Reserve thought it would.

14 Again, those types of things create  
15 levels of uncertainty in the market.

16 Q. Well, forgive the hyperbole but this is the  
17 clearest way I can put it.

18 Are you suggesting that stable  
19 disaster is better than uncertainty?

20 A. That is somewhat hyperbolic. That may be  
21 the first point on which we agreed but the -- no, I'm  
22 not making any judgments as to what ought to be the



1 policy. My observations here simply have to do with  
2 the way the capital market looks at the effect, the  
3 intent of these programs and the additional  
4 uncertainty as to the timing, the structure, the  
5 effect of future programs.

6 I'm not making any judgments as to  
7 what federal policy ought to be.

8 Q. And I was not trying to ask you about the  
9 federal policy. I too was trying to get at the  
10 effect, and as to the effect on the equity markets,  
11 is it your contention that the equity markets would  
12 be more stable had the federal government not  
13 intervened, because, as I read your testimony, it  
14 suggests the opposite.

15 A. Again, I'm not making any judgments. I'm  
16 not trying to speak to the counterfactual here. All  
17 I'm saying is that the markets right now perceive a  
18 higher level of risk and uncertainty as a result of  
19 current and potentially future federal intervention.  
20 That's all.

21 Q. You say higher. Implicitly, there's a  
22 comparison. Comparison to what -- if the federal

1 government had not intervened?

2 A. The mere fact that the federal government  
3 had to intervene. I think we would all agree that  
4 the federal government's quantitative easing program  
5 was unusual. When the Federal Reserve enters into an  
6 unusual initiative like that, it is a measure of  
7 market instability.

8 The next question then becomes, what  
9 was the effect of that. It's unclear what the effect  
10 was. That adds to the level of uncertainty.

11 The next question becomes what will  
12 future intervention, if any, be. That, likewise,  
13 adds to the uncertainty. That's the point of my  
14 testimony.

15 Q. As to those effects, you did not apparently  
16 make any judgment or assessment of whether the  
17 intervention had an effect in the markets that was  
18 positive?

19 A. Oh, I don't know if anyone will say that,  
20 sir.

21 Q. With respect to the Commission's -- well,  
22 I'm trying to phrase this one delicately.

1                   Will you acknowledge the possibility  
2   that the Commission might be in error in one of its  
3   factual determinations in a rate case?

4           A.   I just can't answer that.  I mean, I don't  
5   know what you're talking about in terms of an error.  
6   I can't answer that.

7           Q.   Okay.  Let's turn to the articles you  
8   discussed in your surrebuttal testimony at pages 48  
9   to 50.  I think they're the same ones you discussed  
10   in your rebuttal testimony.

11          A.   So we're talking pages 48 to 50?

12          Q.   Yes, pages 48 to 50.

13                   Going back to the DCF model, in the  
14   context of this discussion, looking at the DCF model,  
15   is the required growth input for the DCF model the  
16   nominal growth rate?

17          A.   The way that analysts in regulatory  
18   proceedings model it, yes, it's typically the nominal  
19   growth rate.

20          Q.   Well, let's confine ourselves to the  
21   regulatory arena.

22          A.   Yes, I would agree with that.

1           Q.    Okay.  And that is different from the real  
2   growth rate which does not include the effect of  
3   inflation, am I correct?

4           A.    Yes.

5           Q.    And except in extremely unusual  
6   circumstances, that would mean that in most cases,  
7   the real growth rate is lower than the nominal growth  
8   rate?

9           A.    I would agree with that.

10          Q.    In one of the articles, you discuss the  
11   International Evidence article.

12          A.    Yes.

13          Q.    Do you know which one I mean?

14          A.    It's referenced beginning on line 848.

15          Q.    Okay.  Don't the authors of that article  
16   make clear that what they're investigating and what  
17   their conclusions refer to are real growth rate?

18          A.    Yes, I believe that's correct as I recall.

19          Q.    And that article and some of the others  
20   that you discussed made findings that you used the  
21   term associated with to describe the relationship of  
22   growth and retention or payout ratios.

1                   Does that mean that the authors did  
2   not identify any causal relationship in their  
3   studies?

4           A.    I think the authors looked at the  
5   relationship between payout ratios and future  
6   growths, and I think in some of the articles the  
7   authors did provide possible list of causes, but  
8   typically, this type of analysis or regression  
9   analysis looks to explanatory variables which may  
10   have causal relationships, but the precise nature of  
11   the cause often is left to subsequent analysis.

12          Q.    So these particular articles did not define  
13   a causal relationship?

14          A.    They discussed possible causal  
15   relationships, but the nature of the analysis was  
16   really looking at the payout ratio versus subsequent  
17   growth.

18          Q.    As I read the conclusions of those  
19   articles, they did not exclude the possibility that  
20   companies that are doing well and have high growth  
21   rates tend to pay out more in dividends as one cause  
22   of the effect that they noticed?

1           A.    There were several, and, as I recall, one  
2   articles said that it was still a function of -- it  
3   was still subject to further research.

4                       That said, the findings were very  
5   robust.

6           Q.    But it did not include that possibility?

7           A.    Among others.  There were many, many  
8   possibility causes.  There are many, many possible  
9   causes, but again, the relationship was robust over  
10  many different scenarios.

11          Q.    But as you said, there were many causes,  
12  possible causes, and the articles also identified  
13  factors like management choices and changes in the  
14  operating environment or financial environment that  
15  also affect how earnings change after a decision to  
16  retain or pay out earnings?

17          A.    Yes, there were different issues that were  
18  cited, but again, I think as we note beginning on  
19  line 896, they noted several possible explanations  
20  but yet they were clear in the results.

21          Q.    Am I accurate in saying that each of the  
22  three articles you discuss use historical data as the

1 basis of their studies?

2 A. Yes.

3 Q. And their conclusions in those studies?

4 A. Yes, as these types of studies do.

5 Q. I'd like to describe what I think is a  
6 difference between utilities and unregulated  
7 companies and see if you agree with it.

8 Do you agree that aside from  
9 regulatory lag, there's no opportunity for a  
10 regulated utility to increase its earnings on the  
11 basis of recovering expenses in excess of operating  
12 expenses; that is, there's a dollar for dollar  
13 recovery on operating expenses?

14 A. Would you -- again, I hate to constantly be  
15 rephrasing questions but I want to be sure we're  
16 talking about the same thing here.

17 Is your question that if a company's,  
18 if it's actual revenue, its actual costs, its actual  
19 cost of equity were specifically as defined by its  
20 revenue requirement and that stayed constant over  
21 time, then the realized return profit, return on  
22 average common equity, would be equal to that which

1 is authorized. By definition, that's the case.

2 Q. My question was far less mathematical than  
3 that.

4 I agree with your question, but my  
5 question was simply do utilities get dollar for  
6 dollar recovery on operating expenses so that there's  
7 no opportunity to make profit on operating expenses?

8 A. Do they get dollar for dollar recovery?

9 Q. Regulatory lag aside.

10 A. Generally speaking, utilities get recovered  
11 prudently incurred reasonable operating expenses.

12 Q. Okay. So the source of profits for a  
13 utility would be its earnings on its invested  
14 capital?

15 A. Its earnings -- well, profit is earnings on  
16 invested capital.

17 Q. Hold that thought.

18 The point of this is to say that a  
19 utility earns its profits, that is, its earnings come  
20 from the return on its invested capital and not from  
21 its operating expenses.

22 A. Well, the fact is a return, the return on



1     its invested capital is a function of several things.  
2     I mean, there are many models that you can use to  
3     decompose that return, and that return, of course, is  
4     a function of operating margin yet is in relative  
5     relationship of net income to sales, the relationship  
6     of revenue to assets, the relationship of assets to  
7     equity. All of those things factor into what the  
8     return is which, again, not to be too mathematical,  
9     simply is a numerator in the metric that you discuss.  
10    And so the return, the net income, the profit is a  
11    function of many variables.

12           Q.   Is it true that all other factors held  
13    equally, a utility that invests less will have less  
14    opportunity to increase earnings?

15           A.   Relative to what?

16           Q.   Relative to a greater level of investment.

17           A.   Let me go back to the conversation we just  
18    had. Again, that hypothetical has to hold so many  
19    things constant.

20           Q.   And I want to hold them all constant.

21           A.   If everything is held constant and if all  
22    companies had the same profit margin, they had the

1 same capital structure, they had the same  
2 relationship of revenues to assets, they had the same  
3 effective tax rate, they had all of those things  
4 which is obviously highly improbable, then, yes, the  
5 growth in earnings would be a function of growth in  
6 investment.

7 And one other issue which is obviously  
8 extremely important is rate design. We'd have to be  
9 sure they had common rate design.

10 Q. Let's hold that one constant too.

11 A. There's a whole lot being held constant.

12 Q. Absolutely.

13 So then the answer is...

14 A. Under that highly improbable scenario, yes.

15 MR. REDDICK: Thank you.

16 Your Honors, I have no further  
17 questions.

18 JUDGE ALBERS: Thank you.

19 Does AG, CUB have any questions?

20 MS. MUNSCHE: No, we do not, Your Honor.

21 JUDGE ALBERS: Mr. Jenkins?

22 MR. JENKINS: Good day. I'm not sure if it's

1 morning or afternoon yet.

2 THE WITNESS: Depending upon the time zone.

3 CROSS-EXAMINATION

4 BY MR. JENKINS:

5 Q. Looking at your rebuttal, page 7, line 122,  
6 and correct me if I have it wrong, that's before the  
7 revision.

8 A. Okay. I have that.

9 Q. You discuss there investor expectations  
10 being framed by returns of equity recently authorized  
11 in other jurisdictions, and on the next page, page 8,  
12 you provide, don't you, a table titled "Mean  
13 Authorized ROE for Electric Utilities."

14 Would you agree that the national  
15 average of ROEs awarded electric utilities by utility  
16 commissions during the time period January 2008 to  
17 June 2011 was approximately 10.3 percent?

18 A. Yes, I would agree with that.

19 Q. Now, isn't it true that investors generally  
20 expect ROEs for distribution only electric utilities  
21 to be somewhat lower than integrated distribution and  
22 generation electric utilities?

1 JUDGE YODER: One second.

2 Mr. Jenkins, is your microphone on?

3 MR. JENKINS: Oh, I'm not sure.

4 JUDGE YODER: Okay. Everybody that might be

5 listening in now can hear you.

6 THE WITNESS: Let me make sure I understand

7 your question.

8 When you say distribution, you're

9 simply talking about electric transmission

10 distribution utilities as opposed to other types

11 distribution utilities?

12 MR. JENKINS: Correct.

13 THE WITNESS: I think that it's a function of

14 many issues including rate design, the risk of the

15 company, the types of generating assets that

16 integrating utilities may have, so it depends. It

17 could be that the required returns for integrated

18 utilities could be higher depending upon their

19 circumstances.

20 Q. For example, integrated electric utilities

21 with nuclear generation.

22 A. Well, again, it depends upon the nature of

1     the -- boy, it depends upon so many things.  It  
2     depends upon the nature of the asset.  It depends  
3     upon the nature of the ownership in the asset.  It  
4     depends upon the regulatory structures associated  
5     with recovering costs for that asset, so it is a  
6     function of many different variables.

7             Q.  I notice you provided some analysis of the  
8     comparison you did between ROEs for electric and  
9     natural gas utilities during that period.

10                     Did you perform a similar analysis  
11     comparing electric distribution utilities with  
12     integrated electric distribution and generation  
13     facilities?

14             A.  No, I did not.

15             Q.  Now, in your proxy group, you include a  
16     number of utilities that are integrated electric  
17     distribution and generation.

18             A.  As did all of the witnesses in this case.

19             Q.  Now, if you look back at your chart on page  
20     8 of the rebuttal, you see a block there 11.01 to  
21     11.25 percent?

22             A.  Yes.

1           Q.   And it looks to me like there are four  
2 cases in that block.

3           A.   Yes, that's correct. Well, I don't know  
4 offhand what it would be in that range.

5           Q.   And one of the companies in your proxy  
6 group is a southern company, correct?

7           A.   Correct.

8           Q.   And would you agree that the largest  
9 regulated utility within the southern companies is  
10 Georgia Power Company?

11          A.   Yes.

12          Q.   And would you also agree that during that  
13 time frame in your chart, notably toward the end of  
14 2010, Georgia Power Company received an ROE of 11.15  
15 percent?

16          A.   I don't know that number specifically.

17          Q.   You are aware that Georgia Power Company is  
18 involved in a nuclear expansion program at the  
19 present, are you not?

20          A.   I am, and I also recall that Georgia Power  
21 has many nuclear companies that are developing --  
22 excuse me. Many companies that are developing

1 nuclear plants do so with the support of the  
2 regulatory commissions and, in some cases, the  
3 legislature.

4 Q. Are you aware in the last Georgia Power  
5 rate proceeding in 2010 that Georgia Power advocated  
6 receiving a return above the national average ROE  
7 that you've discussed because they were not a  
8 distribution only utility?

9 A. I don't know that.

10 MR. JENKINS: Nothing further.

11 JUDGE ALBERS: Would you like a few moments  
12 for -- no one else, right? Would you like a few  
13 moments to --

14 MR. FLYNN: Yes, please.

15 JUDGE ALBERS: We'll go ahead and recess for  
16 two minutes.

17 (Recess taken.)

18 JUDGE ALBERS: Do we have redirect?

19 MR. FLYNN: Yes, we do, Judge. We have just a  
20 few minutes.

21

22

1 REDIRECT EXAMINATION

2 BY MR. FLYNN:

3 Q. Mr. Hevert, Mr. Olivero asked you some  
4 questions which indicated that there was a mistake in  
5 some values entered in the chart on page 21 of your  
6 surrebuttal.

7 Do you recall those questions?

8 A. I do, yes.

9 Q. And do you have any additional comments  
10 there?

11 A. I do.

12 As I said earlier, I did mislabel  
13 that, and I apologize for that, but on page 19, lines  
14 262 to 264 is where we note the numbers that  
15 Ms. Freetly used.

16 Q. All right. Mr. Olivero also asked you some  
17 questions regarding an event study involving Detroit  
18 Edison and Michigan Consolidated Gas Company.

19 Do you recall those questions and the  
20 answers you gave?

21 A. Yes, I do.

22 Q. And the record will show exactly what you



1     said, but I thought I heard you say in response to a  
2     question from Mr. Olivero that you had undertaken the  
3     event study for reasons not related to this rate  
4     case.

5                     Do you recall that?

6             A.    I do.

7             Q.    Would you like to clarify your testimony  
8     there?

9             A.    We undertook the event study based on  
10    Ms. Freetly's analysis in the prior case, and so we  
11    were aware of her approach and undertook the event  
12    study on that basis, and to be clear, it was not in  
13    response to her analysis in this case.

14            Q.    But the event study was undertaken for this  
15    case?

16            A.    Correct.

17            Q.    Mr. Olivero also asked you a question or  
18    two about the utility's proposal in the rate case in  
19    the event study involving a 25-basis point ROE  
20    deduction.

21                    Could you provide the context for  
22    that?

1           A.   Well, my understanding was that that  
2   25-basis point adjustment was in response to both the  
3   coupling proposal as well as the uncollectibles  
4   rider.

5           Q.   What significance does that have?

6           A.   Well, the coupling is a controversial  
7   issue, controversial with respect to the effect it  
8   may or may not have on the return on equity, and it's  
9   not uncommon to see adjustments made by regulatory  
10   commissions as a result of decoupling because it is  
11   sometimes considered to be a very comprehensive  
12   structure.

13                   So it may be difficult to isolate the  
14   respective effects of the uncollectibles rider from  
15   decoupling as it relates to a specific adjustment.

16           Q.   Mr. Reddick asked you a series of questions  
17   that involved where a utility's return comes from.

18                   Do you recall that?

19           A.   I do.

20           Q.   And I think at one point he asked you more  
21   or less that a utility's return comes from earnings  
22   on investment.

1 Do you recall that?

2 A. I do.

3 Q. Could you clarify your answer in that  
4 regard?

5 A. I think the ability to have earnings on an  
6 investment depends upon the, as I mentioned, the  
7 level of revenues established by a commission, and to  
8 the extent that those revenues exceed the costs, then  
9 there will be profit left over for the utility, and  
10 that's the nature of the return that's available for  
11 a utility. It is due to the relationship between the  
12 revenues authorized and the expenses incurred.

13 MR. FLYNN: Thank you. That's all of my  
14 redirect.

15 JUDGE ALBERS: Any recross?

16 MR. OLIVERO: No, Your Honor.

17 MR. REDDICK: Just one.

18 RECROSS-EXAMINATION

19 BY MR. REDDICK:

20 Q. Is the revenue requirement defined as  
21 operating expenses plus the return times the plant  
22 investment?

1           A.   Generally speaking.

2           MR. REDDICK:   That's all.

3           JUDGE ALBERS:   Thank you.

4                       Any objections then to any of

5   Mr. Hevert's testimony?

6                       Hearing none, then AIC Exhibits 3.0E,  
7   3.1E through 3.12E, 3.0G, Appendix A Revised to 3.0G,  
8   3.1G through 3.14G, 23.0 Revised, 23.1 through 23.21,  
9   41.0, 41.1 through 41.11 are all admitted into the  
10   record.

11                      (Whereupon AIC Exhibits 3.0E,  
12                      3.1E through 3.12E, 3.0G,  
13                      Appendix A Revised to 3.0G, 3.1G  
14                      through 3.14G, 23.0 Revised,  
15                      23.1 through 23.21, 41.0, 41.1  
16                      through 41.11 were admitted into  
17                      evidence at this time.)

18           JUDGE ALBERS:   Thank you, sir.

19                      Given the time, we'll go ahead and  
20   break for lunch and resume at 1 o'clock with  
21   Ms. Freetly.

22

1 (Whereupon the lunch recess was  
2 taken from 12:00 p.m. to 1:00  
3 p.m.)

4 JUDGE YODER: Back on the record.

5 Before we enter a ruling on the motion  
6 to compel filed by RGS, I assume there's not been any  
7 change in the parties' position since this morning.

8 MR. TOWNSEND: That's correct, Your Honor.

9 JUDGE YODER: Okay. All right. Then the  
10 judges will rule on our understanding of what data  
11 requests are in dispute, the first being RGS-CUB  
12 1.18.

13 The ruling is that CUB is directed, if  
14 it has a record of what changes it has made to the  
15 market monitor system or the market monitor, excuse  
16 me, it is directed to provide those changes made  
17 since 2010.

18 On data request, this would apply to  
19 both 1.20 and 1.21, 1.20 refers to variable plans,  
20 1.21 refers to fixed price plans, the ruling is that  
21 if CUB's market monitor calculates the savings or  
22 loss for a plan currently being offered and that

1 calculation extends beyond the term that the PGA is  
2 known, then CUB is directed to explain the  
3 calculations in which it arrives at the savings or  
4 loss.

5 As to data request RGS-CUB 1.22, CUB  
6 is directed to explain or to provide in a response  
7 whether there is a regular schedule and to provide  
8 the schedule in which those updates are made to the  
9 market monitor or if they are made, in essence,  
10 randomly.

11 As to data request RGS-CUB 1.29, the  
12 ALJ decision is to find that data request is proper,  
13 and we grant the motion to compel in regards to 1.29.

14 Now to staff witness Ms. Freetly.

15 MR. TOWNSEND: Your Honor?

16 JUDGE YODER: Yes.

17 MR. TOWNSEND: I'm sorry. There were two  
18 components to the request for relief. One was with  
19 regards to the actual compelling the responses, and  
20 we appreciate the ruling on that.

21 The other component to the request for  
22 relief was that we be granted the ability to recall

1 Mr. Thomas next week after we've had an opportunity  
2 to digest the information that had been provided by  
3 the Citizens Utility Board.

4 JUDGE YODER: All right. I think we'll  
5 probably revisit that. We'll see if CUB will make  
6 best efforts to provide that information that's been  
7 ordered to RGS and the other parties as they're  
8 providing their data responses before the  
9 cross-examination so that you've had an opportunity.

10 If you do not feel, you've had an  
11 opportunity to review it such that you can make  
12 adequate cross-examination on Friday, then we can  
13 discuss with Mr. Thomas here whether it's necessary  
14 to have him come back for further cross-examination  
15 and what date that would be.

16 So we'll reserve that part of it I  
17 guess until Friday. Is that all right, Mr. Townsend?

18 MR. TOWNSEND: Thank you, Your Honor.

19 And what is the deadline for CUB to  
20 provide the responses based on your ruling?

21 JUDGE YODER: Ms. Munsch, it might be early but  
22 do you have any idea when CUB might be able to

1 provide the responses to any or all of those?

2 MS. MUNSCH: I would need to check with the  
3 client on 1.1A for certain. That's the record of  
4 changes that we're directed to provide since 2010.

5 For 1.20 and 1.21, I think I know what  
6 the answer to that question is.

7 1.22, I'd need to check with the  
8 client.

9 1.29, I think, you know, I believe if  
10 I understand the request properly, that's the work  
11 papers used in that statement, and the work papers  
12 used in that statement are the database and the  
13 spreadsheets and such. That's what we'd be  
14 providing. That's where that number comes from, so  
15 we can provide those explicitly in response to that  
16 question.

17 With respect to the other items, I can  
18 get back to you as soon as I have an opportunity to  
19 talk to the client.

20 JUDGE YODER: Why don't we reserve the deadline  
21 till the end of the cross, and we'll determine  
22 accordingly the date for that.



1           MR. TOWNSEND: With regards to 1.29, I think we  
2   discussed this on the record during arguing the  
3   motion, we are looking for the actual calculation to  
4   be able to come up with the number, not just the work  
5   papers associated with that calculation, just so that  
6   we're all clear.

7           JUDGE YODER: Okay.

8                   Ms. Freetly, were you sworn?

9           MS. FREETLY: I was.

10          JUDGE YODER: Okay. Thank you.

11                   And it's Ms. Von Qualen it appears.

12          MS. VON QUALEN: Good afternoon.

13          MS. FREETLY: Hello.

14                   JANIS FREETLY

15   called as a witness herein, on behalf of staff of the  
16   Illinois Commerce Commission, having been first duly  
17   sworn on her oath, was examined and testified as  
18   follows:

19                   DIRECT EXAMINATION

20   BY MS. VON QUALEN:

21           Q. Please state your name for the record and  
22   spell your last name.

1           A.    My name is Janice Freetly (F-r-e-e-t-l-y).

2           Q.    Who's your employer and what is your

3 business address?

4           A.    I'm employed at the Illinois Commerce

5 Commission, 527 East Capitol Avenue, Springfield,

6 Illinois 62701.

7           Q.    What is your position at the Commission?

8           A.    I'm a senior financial analyst.

9           Q.    Ms. Freetly, did you prepare testimony and

10 schedules for submission in this proceeding?

11          A.    Yes.

12          Q.    Do you have before you a document which is

13 titled ICC Staff Exhibit 8.0, Direct testimony of

14 Janis Freetly?

15          A.    Yes.

16          Q.    Did you prepare that document for

17 submission in this proceeding?

18          A.    I did.

19          Q.    And you have attached to it numerous

20 schedules?

21          A.    Yes.

22          Q.    Did you also prepare those schedules for

1 submission in this proceeding?

2 A. I did, yes.

3 Q. Is the information contained in ICC Staff  
4 Exhibit 8.0 true and correct to the best of your  
5 knowledge?

6 A. Yes.

7 Q. If I were to ask you the same questions  
8 today, would your answers be the same?

9 A. Yes.

10 Q. Do you also have before you a document  
11 which is titled ICC Staff Exhibit 25.0R, Revised  
12 Rebuttal Testimony of Janis Freetly?

13 A. Yes, I do.

14 Q. Did you prepare that document for  
15 submission in this proceeding?

16 A. I did.

17 Q. Do you have any additions or corrections to  
18 ICC Staff Exhibit 25.0R?

19 A. No.

20 Q. Is the information contained within that  
21 document true and correct to the best of your  
22 knowledge?

1           A.    Yes.

2           Q.    And if I were to ask you those questions  
3 today, would your answers be the same?

4           A.    Yes be.

5           MS. VON QUALEN:  At this time, I move for  
6 admission into evidence ICC Staff Exhibit 8.0 with  
7 attached schedules and ICC Staff Exhibit 25.0R.

8           JUDGE YODER:  All right.  I'll reserve ruling  
9 on the admissibility till after cross.

10                   Mr. Flynn, I believe you have cross  
11 reserved for Ms. Freetly?

12           MR. FLYNN:  I do.  Thank you, Judge.

13                   Good afternoon, Ms. Freetly.

14           THE WITNESS:  Hello.

15           MR. FLYNN:  I believe we spoke during the last  
16 Ameren case if I recall.

17           THE WITNESS:  Yes.

18                   CROSS-EXAMINATION

19   BY MR. FLYNN:

20           Q.    Throughout your, or various places in your  
21 direct and rebuttal testimony, you reference credit  
22 ratings, is that right?

1           A.    Yes.

2           Q.    What is a credit rating?

3           A.    Well, the credit rating, there's various

4   types of credit ratings, but a corporate credit

5   rating would be the kind of a score given to a

6   company for the general credit worthiness of that

7   company by a rating agency.

8           Q.    And the rating agencies take into account

9   various factors in arriving at these scores, right?

10          A.    Yes.

11          Q.    And the scores are expressed in letters and

12   numbers, is that right?

13          A.    Yes.

14          Q.    What's a notch?

15          A.    A notch?

16          Q.    Yes, in a credit rating.

17          A.    A notch would be just the various levels of

18   ratings.  So, for example, within the triple B

19   rating, there's triple B plus, triple B, triple B

20   minus.  Each level would be a notch.

21          Q.    Each increment?

22          A.    Yes.

1           Q.    An incrementally better or worse score is a  
2 notch?  
3           A.    Yes.  
4           Q.    All right.  What does it mean when a  
5 company is said to be investment grade?  
6           A.    Well, that means that they have a credit  
7 rating above the triple B minus level credit rating,  
8 and I don't believe I have the exact inscriptions  
9 here but it means they are generally creditworthy and  
10 would be able to raise capital in the markets.  
11          Q.    Is Ameren Illinois Company rated as  
12 investment grade?  
13          A.    Yes.  
14          Q.    How many notches above non-investment grade  
15 status are there?  
16          A.    I believe it's at the lowest notch, triple  
17 B minus.  
18          Q.    So they're one notch above being not  
19 investment grade?  
20          A.    Yes.  
21          Q.    All right.  In your testimony -- well, let  
22 me restate that.

1                   So if they were downgraded even one  
2 notch, they would no longer be investment grade. Is  
3 that right?

4           A.    Yes.

5           Q.    In your testimony generally, I'm not  
6 pointing to a specific page now, you address the  
7 effect of the riders EUA and GUA on Ameren Illinois'  
8 risk profile, etc., is that right?

9           A.    Yes.

10          Q.    And I don't mean to use risk profile in any  
11 technical sense, so if you have a problem with that,  
12 let me know.

13          A.    Okay.

14          Q.    All right. In your view, these riders have  
15 a positive effect on Ameren Illinois Company's  
16 creditworthiness, is that right?

17          A.    Yes. My position is that, yes, the  
18 uncollectible riders would have a positive effect on  
19 the creditworthiness, and credit rating agencies have  
20 stated such, that riders such as the uncollectible  
21 rider proposed here would be creditworthy.

22          Q.    And you said would have a positive effect,

1 meaning they do have a positive effect, is that  
2 right?

3 A. A positive effect on the risk of the  
4 company, yes.

5 Q. Because they are in effect now, correct?

6 A. Yes.

7 Q. All right. So in your view, it's not a  
8 hypothetical situation that the riders would have a  
9 positive effect if the company were to use them. In  
10 fact, the company is using them, and so the positive  
11 effect is there, is that right?

12 A. Yes. Theoretically, the uncollectible  
13 riders reduce the volatility of the cash flows  
14 thereby reducing the risk.

15 Q. And are you able to translate this positive  
16 effect into some number of notches?

17 A. Well, as stated in my testimony, I assumed  
18 that the cost recovery factor, which is one factor in  
19 the credit ratings of Moody's, that the credit rating  
20 assigned to that factor would improve by a full  
21 credit rating or three notches.

22 Q. So if Ameren Illinois were to cancel its



1 uncollectibles riders, it would then find itself two  
2 notches below investment grade, is that right?

3 A. Well, no. My testimony is not that the  
4 actual ratings of the company would change. It's the  
5 metric that I use to measure the decrease in risk.

6 Q. Well, the decrease in risk has value to the  
7 company if its ratings change for example; is that  
8 right?

9 A. Yes.

10 Q. But you're saying that there is also a  
11 value to the company even if its ratings don't  
12 change?

13 A. Yes.

14 Q. And you've quantified that by calculating  
15 the degree to which ratings were to change, would  
16 change, if a change were to occur?

17 A. In order to have a metric by which to  
18 measure the change, yes, I use credit ratings for  
19 that purpose.

20 Q. Do other Illinois utilities have  
21 uncollectibles riders?

22 A. I believe so.

1 Q. How about Peoples Gas?

2 A. I believe so.

3 Q. Does the Commission use this metric we're

4 proposing here to calculate the effect on Peoples

5 Gas?

6 A. I believe that is the case. This is the

7 methodology that staff is following, and I believe it

8 was adopted in the last Peoples Gas case. I'm not

9 certain.

10 Q. Does ComEd have a comparable rider?

11 A. I'm not sure.

12 Q. You in developing your testimony in this

13 case, you didn't look at ComEd to see if ComEd had a

14 comparable rider, is that right?

15 A. Right, yeah. I looked at the sample

16 companies that I used.

17 Q. All right. I want to talk about your DCF

18 results.

19 You developed your proposed electric

20 and gas ROEs using sample groups of companies, is

21 that right?

22 A. Yes.

1           Q.    All right.  And using the data from each  
2   group, you performed a CAPM calculation and a DCF  
3   analysis, is that right?

4           A.    Correct.

5           Q.    And you ran a multi-stage non-constant  
6   growth DCF model, is that right?

7           A.    Yes.

8           Q.    And I think the last Ameren case was the  
9   first time that you had done that for the Ameren  
10   Companies, is that right?

11          A.    I believe so.

12          Q.    So this is the second case in which you  
13   personally have done that, is that right?

14          A.    For Ameren, yes.

15          Q.    And as the name suggests, in a multi-stage  
16   non-constant growth model, the growth rate is not  
17   held constant, is that right?

18          A.    Yes.

19          Q.    And as I understand what you've done, there  
20   are three stages, is that right?

21          A.    Yes.

22          Q.    All right.  The first stage is this near

1 term growth stage covering years 1 through 5, is that  
2 right?

3 A. Yes.

4 Q. And then the second stage is a transitional  
5 growth period I think you called it, is that right?

6 A. Yes.

7 Q. And that's years 6 to 10?

8 A. Uh-huh, yes.

9 Q. And then the third stage is this steady  
10 state stage that begins after year 10 and goes out  
11 indefinitely in the future, is that right?

12 A. Yes. That's the assumption of the model.

13 Q. So in terms of your analysis, we're talking  
14 about a steady state stage that begins sometime in  
15 2021?

16 A. Correct.

17 Q. All right. And in the steady state stage  
18 you use, you develop a nominal GDP growth rate, is  
19 that right?

20 A. Yes.

21 Q. And that's the expected real GDP growth  
22 rate plus the expected inflations, is that right?

1           A.    Yes.

2           Q.    And you calculated a third stage or steady  
3   state stage nominal GDP growth rate of 4.8 percent,  
4   is that right?

5           A.    Yes.

6           Q.    And the expected real growth rate you took  
7   from the EIA and Global Insight's forecasts of real  
8   GDP growth rate, is that right?

9           A.    Yes.

10          Q.    And then you extracted an estimate of the  
11   expected inflation rate by comparing yields on two  
12   types of U.S. Treasuries, one with a premium for  
13   inflation and one that does not, is that right?

14          A.    Yes.

15          Q.    And with respect to the extracted inflation  
16   rate, you performed your analysis using data from  
17   June 3, 2011, is that correct?

18          A.    Yes.

19          Q.    And what products were you using from  
20   June 3rd?

21          A.    What products was I using?

22          Q.    What treasuries, what instruments?

1           A.    I was using the Treasury yield on ten and  
2   thirty year tips and ten and thirty year U.S.  
3   Treasury bonds.

4           Q.    And the yields you were using, where did  
5   those come from?

6           A.    I obtained them from the Federal Reserve  
7   website.

8           Q.    And these are instruments that are traded,  
9   is that correct?

10          A.    Yes.

11          Q.    All right.  So you used the yields that are  
12   implied by the prices for those instruments on  
13   June 3, 2011?

14          A.    Yes, the yields that investors were willing  
15   to accept on that date, yes.

16          Q.    All right.  And is that at closing of the  
17   market that date?

18          A.    Yes, it's the published rate by the Federal  
19   Reserve on that date.

20          Q.    It could have opened at a different price  
21   on that date, is that right?

22          A.    I suppose.

1           Q.   Any instrument could have been one price at  
2   10 a.m. and a different price at 2 p.m.?

3           A.   That's the nature of the markets.

4           Q.   And in fact, these same instruments could  
5   have had a different price at the opening bell the  
6   following day?

7           A.   Possibly.

8           Q.   All right.  So you use the prices as of the  
9   moment that the market closed on June 3, 2011, is  
10   that right?

11          A.   Right.  Like I said, I used the published  
12   rate from the Federal Reserve as of that date.

13          Q.   And so your nominal GDP growth rate for the  
14   steady state stage is based in part on the yields  
15   investors were willing to accept at one moment in  
16   time?

17          A.   Yes, on that date, June 3rd.

18          Q.   Do you have your rebuttal testimony?

19          A.   I do.

20          Q.   All right.  Could you turn to page 6 of  
21   your rebuttal testimony?

22          A.   Okay.

1 Q. Down at footnote 9, do you see that?

2 A. I do.

3 Q. All right. You reference Docket No.

4 10-0467. Do you see that?

5 A. Yes.

6 Q. That was a rate proceeding involving

7 Commonwealth Edison Company, is that correct?

8 A. Yes.

9 Q. All right. And this is an Illinois

10 Commerce Commission docket reference?

11 A. Yes.

12 Q. And some ten days or so before June 3,

13 2011, the Commission issued an order in the docket

14 that you reference, is that right?

15 A. Yes. I'm not sure of the exact date the

16 order was issued, but I'll accept that.

17 Q. All right. I'm not so much interested in

18 what the Commission did in that case as how, if at

19 all, did that order in that docket affect your

20 analysis of Ameren Illinois Company's required return

21 on equity in this case?

22 A. How did that order impact my analysis in



1      this case is the question?

2 Q. Yes.

3           A. It didn't directly impact my analysis and  
4 testimony.

5 Q. Did it cause you to alter your analysis in  
6 any respect?

7                      A.      No.

8 MR. FLYNN: I have no further questions for  
9 Ms. Freetly.

10 JUDGE YODER: Do you want a moment with the  
11 witness, Ms. Von Qualen?

12 MS. VON QUALEN: Yes.

13 JUDGE YODER: Okay. We'll take a couple  
14 minutes off the record then.

15 (Recess taken.)

16 JUDGE YODER: Back on the record.

17                   Ms. Von Qualen, do you have redirect

18     for Ms. Freetly?

19 MS. VON QUALEN: Yes, I do.

20 REDIRECT EXAMINATION

21 BY MS. VON QUALEN:

22 Q. Ms. Freetly, you remember Mr. Flynn asking

1     you some questions about the relationship between the  
2     uncollectible rider and Ameren's credit rating?

3             A.    Yes.

4             Q.    If Ameren Illinois withdrew its  
5     uncollectible rider, would you expect that Ameren  
6     would be downgraded to two notches below investment  
7     grade?

8             A.    No.   If Ameren withdrew the uncollectible  
9     rider, then my adjustment to the cost of equity would  
10    no longer be made, so if the authorized return on  
11    equity would go up, there would be no adjustment to  
12    the company's credit rating.

13            MS. VON QUALEN:   Thank you.   I don't have any  
14    other questions.

15            JUDGE YODER:   All right.   Very well then.

16                        Do you gentlemen have any?

17            MR. FLYNN:   Oh, yes.

18                                RE CROSS-EXAMINATION

19    BY MR. FLYNN:

20            Q.    Let me see.   So if I understand what you're  
21    saying on redirect, it's that your adjustment offsets  
22    the credit benefit of the presence of the

1 uncollectibles rider, is that right?

2 A. Could you repeat that? I'm sorry.

3 Q. Well, if I understood what you said in --  
4 I'll just rephrase it.

5 In response to Ms. Von Qualen, you  
6 indicated that there would be no downgrade because  
7 you would eliminate both a benefit of the  
8 uncollectibles rider and an offsetting adjustment,  
9 which is your adjustment to ROE, and they'd net each  
10 other out if I understand it, and so there would be  
11 no downgrade, is that right?

12 A. Yes.

13 Q. All right. So then the effect of your  
14 adjustment to ROE is to keep Ameren Illinois a single  
15 notch above junk, is that right?

16 A. Well, the adjustment is meant to balance  
17 the effect of the rider, so I would expect no  
18 movement in the current credit rating of the company.

19 MR. FLYNN: Thank you. Nothing further.

20 JUDGE YODER: All right. Then is there any  
21 objection to the admission of Staff Exhibit 8.0,  
22 Direct Testimony of Ms. Freetly, filed with

1 schedules, and if staff wants to follow along to make  
2 sure I get these right, 8.01B, 8.01G, 8.02, 8.03E,  
3 8.03G, 8.04E, 8.04G, 8.05E, 8.05G, 8.06E, 8.06G, and  
4 8.07 through 8.09. Am I right so far?

5 MS. VON QUALEN: Yes.

6 JUDGE YODER: Okay. And Staff Exhibit 25 is  
7 the revised rebuttal testimony of Ms. Freetly.

8 Any objection?

9 Hearing none, they will be admitted  
10 into evidence in this docket.

11 (Whereupon Staff Exhibits 8.0,  
12 8.01B, 8.01G, 8.02, 8.03E,  
13 8.03G, 8.04E, 8.04G, 8.05E,  
14 8.05G, 8.06E, 8.06G, 8.07  
15 through 8.09, and 25 were  
16 admitted into evidence at this  
17 time.)

18 JUDGE YODER: Thank you.

19 The next witness is Mr. Eggers.

20 Mr. Eggers, were you previously sworn?

21 MR. EGGERS: Yes, I was.

22 MR. FITZHENRY: One minute, Judge.

1                   Ready to proceed.

2                   JUDGE YODER:   Okay.   Go ahead.

3                   TIM EGGERS

4   called as a witness herein, on behalf of Ameren  
5   Illinois Company, having been first duly sworn on his  
6   oath, was examined and testified as follows:

7                   DIRECT EXAMINATION

8   BY MR. FITZHENRY:

9                   Q.   Mr. Eggers, would you please state your  
10   full name and business address?

11                  A.   Tim Eggers (E-g-g-e-r-s).   Business address  
12   is 1901 Chouteau Avenue.

13                  Q.   And on whose behalf are you testifying?

14                  A.   Ameren Illinois.

15                  Q.   And what is your job title with Ameren  
16   Illinois?

17                  A.   I'm the managing executive of gas supply.

18                  Q.   Mr. Eggers, have you caused certain  
19   testimonies and exhibits to be submitted into the  
20   record in this docket?

21                  A.   Yes.

22                  Q.   Okay.   First I want to show you what's been

1 previously marked as Ameren Exhibit 14.0G Revised  
2 titled "Revised Direct Testimony of Timothy L.  
3 Eggers" and ask if that is your sworn testimony to be  
4 submitted in this proceeding?

5 A. Yes, it is.

6 Q. Was that prepared by you or under your  
7 direction and supervision?

8 A. Yes, it was.

9 Q. And do you have any corrections or  
10 modifications to make to that testimony?

11 A. I do not.

12 Q. Okay. And along with your revised direct  
13 testimony, Mr. Eggers, did you also sponsor certain  
14 exhibits, 14.1G through 14.7G?

15 A. Yes, I did.

16 Q. Any corrections to those exhibits?

17 A. I have none.

18 Q. Thank you.

19 Now I'd like you to turn your  
20 attention to what's been identified for the record as  
21 Ameren Exhibit 34 titled "The Rebuttal Testimony of  
22 Timothy L. Eggers" and ask if that is your rebuttal

1 testimony to be admitted into the record in this  
2 docket?

3 A. Yes, it is.

4 Q. And was that testimony prepared by you or  
5 under your direction and supervision?

6 A. Yes, it was.

7 Q. Do you have any changes or modifications to  
8 that testimony, Mr. Eggers?

9 A. I do not.

10 Q. Okay. And did you also in support of your  
11 rebuttal testimony have prepared Exhibits 34.1  
12 through 34.7?

13 A. Yes.

14 Q. And again, were those exhibits prepared by  
15 you or under your direction and supervision?

16 A. Yes, they were.

17 Q. Any changes to those exhibits?

18 A. I have none.

19 Q. And finally, Mr. Eggers, I direct your  
20 attention to what's been previously marked for  
21 identification as Revised Surrebuttal Testimony of  
22 Timothy L. Eggers, Ameren Exhibit 51.0 Revised, and

1 ask if that is your sworn revised surrebuttal  
2 testimony for admission into this docket?

3 A. Yes, it is.

4 Q. Do you have any corrections or  
5 modifications to make to that testimony?

6 A. I have none.

7 Q. And there were no exhibits to that  
8 testimony -- excuse me.

9 You also sponsored Exhibit 51.1, is  
10 that right?

11 A. That is correct.

12 Q. And again, any changes or modifications to  
13 that exhibit?

14 A. No.

15 Q. Okay. And again, Mr. Eggers, if I were to  
16 ask you to answer the questions that have been a part  
17 of your written testimonies, your direct, rebuttal  
18 and surrebuttal testimony, would you give the same  
19 answers as you did in those testimonies?

20 A. Yes, I would.

21 MR. FITZHENRY: Thank you.

22 Your Honor, at this point we move for



1 the admission of the aforesaid testimonies and  
2 exhibits and tender Mr. Eggers for cross-examination.

3 JUDGE YODER: All right. We'll reserve ruling  
4 on admissibility until following cross.

5 I believe staff has reserved cross?

6 MS. VON QUALEN: Yes. Thank you.

7 JUDGE YODER: All right. Go ahead.

8 MS. VON QUALEN: First, I would like to  
9 indicate that I have had discussions with  
10 Mr. Fitzhenry, and the company and staff would plan  
11 to or we are stipulating to the entry of certain data  
12 request responses into the evidentiary record, and I  
13 will identify those responses, and then it's staff's  
14 intention to file a stipulation which will be  
15 designated as Staff Cross Exhibit 12.

16 JUDGE YODER: All right.

17 MS. VON QUALEN: And those data request  
18 responses are to DAS 1.29, and that is without the  
19 highly confidential attachment, DAS 2.01, DAS 5.01,  
20 again, without the highly confidential attachment,  
21 DAS 5.04, DAS 5.05, DAS 5.07, DAS 5.08, DAS 5.09, DAS  
22 5.10, DAS 5.11, DAS 5.12, DAS 5.13, and finally, DAS

1 5.14.

2 JUDGE YODER: Are those going to be found on  
3 e-Docket?

4 MS. VON QUALEN: Yes.

5 JUDGE YODER: Okay. Thank you.

6 MS. VON QUALEN: Good afternoon, Mr. Eggers.

7 THE WITNESS: Good afternoon.

8 MS. VON QUALEN: My name is Jan Von Qualen, and  
9 I have just a few I think fairly easy questions for  
10 you.

11 THE WITNESS: That sounds good.

12 MS. VON QUALEN: You can be the judge of that.

13 CROSS-EXAMINATION

14 BY MS. VON QUALEN:

15 Q. First I would like, if you want to turn to  
16 page 8, you may not need to, but I'm referring to  
17 page 8 of your surrebuttal testimony.

18 A. Okay. I'm there.

19 Q. Towards the bottom of that page, you  
20 describe displacement as referring to the fact that  
21 the gas transportation customers buy and have  
22 delivered is not the same physical gas delivered to

1 the customer's facility.

2 Do you see that?

3 A. I do.

4 Q. Does the concept of displacement also  
5 relate to sales customers?

6 A. Yes.

7 Q. Do you have with you your response to staff  
8 DR DAS 5.05?

9 A. I do not.

10 MS. VON QUALEN: I happen to have a copy with  
11 me. May I approach the witness?

12 JUDGE YODER: Yes.

13 MS. VON QUALEN: Now, this is one of the data  
14 request responses that you're stipulating into the  
15 record so I'm not going to mark it as an exhibit.

16 JUDGE YODER: I assume Mr. Fitzhenry has a  
17 copy.

18 MR. FITZHENRY: I do. 5.05?

19 MS. VON QUALEN: Yes.

20 Q. Looking at your answer to Subpart B, you  
21 state transportation customer over-deliveries are  
22 treated as an imbalance. To settle the imbalance,

1 adjustments to sales customers' activities are made.  
2 These adjustments use total system assets but  
3 primarily lease an on-system storage.

4 Do you see that?

5 A. Yes.

6 Q. Do you mean by that that all transportation  
7 over-deliveries are treated as imbalances?

8 A. They're handled that way from an accounting  
9 standpoint. Excess deliveries by the transportation  
10 customer is considered burned by the sales customer,  
11 and therefore, any net activity of the amounts on a  
12 given day is totally left up to the sales customers  
13 or the amount that is either injected or withdrawn  
14 from our leased or on-system storage.

15 Q. Okay. Let me ask you this. Let's say that  
16 a daily balance transportation customer has  
17 deliveries of 1,000 decatherms and had usage of  
18 700 therms.

19 A. Both in decatherms?

20 Q. Yes.

21 A. Okay. I've got that.

22 Q. According to your interpretation, what

1       would the imbalance be?

2               A.    The imbalance for that particular customer  
3       on that day is 300 decatherms.

4                       Now, since they have rights to place  
5       in their bank 20 percent of their nomination, the 20  
6       percent of the 700 would be 140 decatherms, so 140  
7       decatherms would be placed in their bank, and the  
8       remaining 160 decatherms of their imbalance would be  
9       cashed out.

10                      I can go into further detail on that  
11       cashout if you'd like as far as what would be in the  
12       deadband with no penalty of what would be in the  
13       penalized portion. Of course, that math is all  
14       subject to check.

15               Q.    Now I'd like you to refer to your  
16       Exhibit 14.2.

17               A.    I have it.

18               Q.    This is the currently effective Rider T  
19       with one modification, so more or less the currently  
20       effective Rider T.

21               A.    I understand what you mean there,  
22       certainly.

1           Q.    Now, would you turn to page 3, and I'm  
2   looking at the definition of over-delivery.

3           A.    Okay.

4           Q.    And would you agree that that says  
5   over-delivery occurs when a customer's delivery is  
6   greater than customer's usage and over-delivery is  
7   determined on a daily or monthly basis?

8           A.    Yes.

9           Q.    And now if you'd turn to the definition of  
10   imbalance in that tariff.

11          A.    Okay.

12          Q.    And it says that imbalance means the  
13   difference between customers' deliveries and bank  
14   activity and that customer's usage in terms on a  
15   daily and monthly basis.  An imbalance can be  
16   positive or negative.  For all accounts, imbalance  
17   means the amount of over- or under-delivery volume  
18   after the bank injection or withdrawal limits are  
19   met.

20          A.    Yes.

21          Q.    So would you agree that the tariff provides  
22   that an imbalance is the difference between

1 deliveries plus bank activity and usage?

2 A. Yes. The strict definition of imbalance as  
3 it relates to the cashout in our tariffs is just  
4 that.

5 Q. Is it correct to say that the tariff puts  
6 over-deliveries into two categories -- injections and  
7 imbalances?

8 A. Yeah, assuming a customer -- yes, that's  
9 fair to say, yes.

10 Q. You would agree that the Rider T tariff,  
11 looking at page 6, provides that there will be bank  
12 activity from over- or under-deliveries before  
13 cashout of imbalances?

14 A. Yes.

15 Q. So is the transportation customer injection  
16 of 20 percent of DCN or 20 percent of usage?

17 A. The injection under the current tariff is  
18 20 percent of DCN.

19 Q. So that would be, in our example, that  
20 would be 200 decatherms?

21 A. Oh, yes, exactly, subject to check on the  
22 math. I'm sorry. I did the 20 percent on the wrong

1       number.

2                       Going back to yours, we would inject  
3       into their banks 200 decatherms, and we would cash  
4       out 100 decatherms.

5               Q.    Thank you.

6               A.    My apologies for that.

7               Q.    That's okay.

8                       So in our example, in order to  
9       calculate the imbalance, one would have to take into  
10      consideration bank activity that has occurred?

11              A.    Yes, using the definition of the imbalance  
12      in the Rider T tariff, yes.

13                      Now, imbalance is often used as a word  
14      systemwide, a group of customers, and I think the  
15      nuance that I used it in the DAS 5.05 discussed that  
16      we handle transportation customer imbalances or their  
17      under- and over-deliveries as imbalances might have  
18      caused some of that confusion. We certainly give  
19      them full access to their banks as the tariff  
20      provides.

21              Q.    Would you agree that the 100 decatherm  
22      would get cashed out at 100 percent of the Chicago



1 city gate daily price?

2 A. Yes, I would agree to that.

3 Q. As to the 300 decatherm of physical gas  
4 that was over-delivered, would you agree that it goes  
5 into the system where it mixes with other  
6 transportation customers and sales customers gas?

7 A. Yes.

8 Q. Would you agree that displacement may cause  
9 it to go into on-system storage?

10 A. I would agree that it would go into  
11 on-system storage. The exact use of the terminology  
12 displacement might be worth discussion, but that gas  
13 does physically go into storage.

14 Q. It could also go into off-system storage?

15 A. That is much less likely. All of our  
16 off-system storage is on a pipeline away from our  
17 system, so any gas that gets into our system, we  
18 don't have any means to physically put it back on the  
19 interstate pipeline system and then move it back to a  
20 lease storage service.

21 The only thing that could be done is  
22 if we took an end user nomination at our pipeline

1 gate and then actually nominated that particular  
2 supply back to lease storage somewhere off our  
3 system.

4 That's typically not done, so it's  
5 much more likely in almost all cases, reasonably  
6 speaking, that it will end up in on-system storage or  
7 used by some other customer such as a transportation  
8 customer who was short for the day or a sales  
9 customer.

10 Q. Thank you.

11 Now, I have a question also about DAS  
12 5.13, and I can hand you a copy of that.

13 A. I would appreciate it.

14 Q. Again, this is one of the DR responses that  
15 is in our stipulated exhibit so I have not marked it  
16 and will not be asking it go into evidence at this  
17 time.

18 Now, in DAS 5.13, you were asked if  
19 Ameren ever bought gas at its city gate, right?

20 A. Correct.

21 Q. And your response was, yes, these purchases  
22 are typically daily spot purchases or daily calls on

1     firm swing gas and are priced on a daily city gate  
2     index.

3             A.    Yes.

4             Q.    What is the daily city gate index that you  
5     are referring to?

6             A.    It's most often the Chicago City Gate  
7     Index, Chicago Midpoint for Daily Trades for Gas  
8     Daily is the publication.

9             Q.    Is there a basis from a published index  
10    price?

11            A.    It is a published index price so it  
12    technically doesn't need a basis. We use it directly  
13    as published.

14            MS. VON QUALEN: Thank you. I have no further  
15    questions.

16            JUDGE YODER: Mr. Fitzhenry, do you need a  
17    minute to talk to your witness?

18            MR. FITZHENRY: Can we have one minute?

19            JUDGE YODER: Okay.

20                               (Pause)

21            MR. FITZHENRY: We have nothing further, Judge.

22            JUDGE YODER: There being no redirect, is there

1 any objection to the admission of Ameren  
2 Exhibit 14.0G with accompanying exhibits that were  
3 filed actually at an earlier date, Ameren 14.0G  
4 Revised, Ameren Exhibits 14.1G through 14.7G, Ameren  
5 Exhibit 34, Rebuttal Testimony of Mr. Eggers, or  
6 Ameren Exhibit 51.0 Revised, Revised Surrebuttal  
7 Testimony of Mr. Eggers with the Exhibit 51.1?

8 Hearing none, then those will be  
9 admitted in this docket.

10 (Whereupon Ameren Exhibits  
11 14.0G, 14.0G Revised, 14.1G  
12 through 14.7G 34, 51.0 Revised  
13 and 51.1 were admitted into  
14 evidence at this time.)

15 MR. FITZHENRY: One other matter, Judge.

16 Mr. Robertson would like to introduce  
17 as evidence for the IIEC Mr. Eggers' response to IIEC  
18 7 point...

19 MS. VON QUALEN: Mr. Fitzhenry, could I  
20 interrupt just for a second...

21 MR. FITZHENRY: Sure.

22 MS. VON QUALEN: ...because I did forget

1 something about the stipulation for the DAS series.  
2 I'm told that I forgot to list one of the DAS DR  
3 responses which is DAS 5.15, and I also don't recall  
4 if I asked for its admission into evidence.

5 JUDGE YODER: All right. Well, then let me ask  
6 you as I was trying to type, is it the entire series  
7 of DAS 5.01 through 5.15, or what is not being moved?

8 MR. OLIVERO: It doesn't look like 2, 3 or 6.

9 JUDGE YODER: So 5.01 through 5.04?

10 MS. VON QUALEN: Not through but and 5.04.

11 JUDGE YODER: Okay. So not 2 or 3.

12 5.01 and 5.04 is what you're asking.

13 MS. VON QUALEN: And 5.07, 5.08, 5.09.

14 JUDGE YODER: Okay. Is it from 7 through 15?

15 MS. VON QUALEN: Yes.

16 MR. OLIVERO: Correct.

17 JUDGE YODER: Okay. Then I will reflect it  
18 that way.

19 We'll go back to you in a second,  
20 Mr. Fitzhenry.

21 Is there any objection to the  
22 admission of Staff Cross Exhibit 12 to be filed on

1 e-Docket which is responses to staff data requests  
2 DAS 5.01, 5.04, 5.05 and 5.07 through 5.15?

3 MR. FITZHENRY: No.

4 JUDGE YODER: All right. Then those will be  
5 admitted into evidence in this docket.

6 (Whereupon Staff Cross Exhibit  
7 12 was admitted into evidence at  
8 this time.)

9 MS. VON QUALEN: There was also DAS 1.29 and  
10 DAS 2.01.

11 JUDGE YODER: All right. Then with that  
12 addition, any objection?

13 MR. FITZHENRY: No. Just for clarification,  
14 Ms. Von Qualen previously identified DAS 1.29 without  
15 the highly confidential information, and that was  
16 also true with 5.01.

17 JUDGE YODER: All right. Thank you.

18 Is that of record, Mr. Fitzhenry?

19 MR. FITZHENRY: Well, just as information for  
20 Your Honor, Mr. Robertson intended to submit as a  
21 cross-examination exhibit our response to IIEC 7.22,  
22 and when I see him next, I'll remind him of that so

1 he can take care of the matter, but it was in regard  
2 to his waiver of examination of Mr. Eggers.

3 JUDGE YODER: Okay. Thank you.

4 (Witness excused.)

5 JUDGE YODER: Mr. Sackett, for the record, were  
6 you previously sworn?

7 MR. SACKETT: No, I was not.

8 JUDGE YODER: All right. Would you stand and  
9 raise your right hand?

10 (Whereupon the witness was sworn  
11 by Judge Yoder.)

12 MR. OLIVERO: Good afternoon, Mr. Sackett.

13 MR. SACKETT: Good afternoon.

14 DAVID SACKETT

15 called as a witness herein, on behalf of staff of the  
16 Illinois Commerce Commission, having been first duly  
17 sworn on his oath, was examined and testified as  
18 follows:

19 DIRECT EXAMINATION

20 BY MR. OLIVERO:

21 Q. Would you please state your name and spell  
22 your last name for the record?

1           A.    David Sackett (S-a-c-k-e-t-t).

2           Q.    And by whom are you employed?

3           A.    The Illinois Commerce Commission.

4           Q.    And what is your current position with the  
5 Illinois Commerce Commission?

6           A.    I'm an economic analyst.

7           Q.    And have you prepared written testimony for  
8 purposes of this proceeding?

9           A.    Yes, I have.

10          Q.    Do you have before you a document which has  
11 been marked for identification as ICC Staff  
12 Exhibit 13.0 entitled "Direct Testimony of David  
13 Sackett" which consists of a cover page, a table of  
14 contents, 30 pages of narrative testimony, and  
15 Attachment A?

16          A.    Yes.

17          Q.    And are these true and correct copies of  
18 the direct testimony you prepared for this  
19 proceeding?

20          A.    Yes, they are.

21          Q.    And you also have before you a document  
22 which has been marked for identification as ICC Staff



1 Exhibit 29.0 entitled "Rebuttal Testimony of David  
2 Sackett" which consists of a cover page, a table of  
3 contents, 34 pages of narrative testimony, and  
4 Attachment A?

5 A. Yes.

6 Q. And are these true and correct copies of  
7 the rebuttal testimony that you have prepared for  
8 this proceeding?

9 A. Yes.

10 Q. Mr. Sackett, do you have any corrections to  
11 make to either your prepared direct or rebuttal  
12 testimony?

13 A. Yes, I do. I have one correction to make  
14 to my rebuttal testimony.

15 Q. And can you point that out to us?

16 A. On page 7, line 150, I used the phrase  
17 "This is only 22 percent of the total system," and  
18 the correct percentage is 23 percent.

19 Q. So the only change would be instead of 22,  
20 you would have 23 percent, correct?

21 A. Right.

22 MR. OLIVERO: Your Honor, I'm going to ask, the

1 other day, did you indicate that if we made any  
2 changes that we should file a revised version of all  
3 our testimony?

4 JUDGE YODER: With that being a fairly minor  
5 correction, hopefully everybody can get that in their  
6 records.

7 Does anyone have a request of staff to  
8 file a revised...

9 MR. FITZHENRY: No.

10 JUDGE YODER: All right. Hearing no request  
11 then, we'll let that correction on the stand suffice.

12 MR. OLIVERO: Thank you.

13 Q. Mr. Sackett, is the information contained  
14 in ICC Staff Exhibits 13.0 and 29.0 and the  
15 accompanying attachments with the one correction you  
16 made to your rebuttal testimony true and correct to  
17 the best of your knowledge?

18 A. Yes, it is.

19 Q. And if you were asked the same questions  
20 today, would the answers contained in your prepared  
21 testimony be the same?

22 A. Yes.

1           MR. OLIVERO: Your Honor, at this time subject  
2 to cross, we would ask for admission into the  
3 evidence of Mr. Sackett's prepared direct testimony  
4 marked as Staff Exhibit 13.0 including attachment and  
5 Mr. Sackett's prepared rebuttal testimony marked as  
6 ICC Staff Exhibit 29.0 with attachment and with the  
7 one minor correction, and we would tender Mr. Sackett  
8 for cross-examination.

9           JUDGE YODER: All right. We'll reserve the  
10 admissibility of those following cross.

11                   And it appears that Ameren is the only  
12 party that has reserved cross.

13           MR. FITZHENRY: We do. Thank you, Your Honor.

14           JUDGE YODER: Go ahead.

15           MR. FITZHENRY: Good afternoon, Mr. Sackett.

16           THE WITNESS: Good afternoon.

17                   CROSS-EXAMINATION

18 BY MR. FITZHENRY:

19           Q. We're going to talk about -- drum roll --  
20 the Nicor method, okay?

21           A. Okay.

22           Q. I recall in reviewing one of your responses

1 to our data request that the Nicor method has evolved  
2 over a series of rate cases, correct?

3 A. Yes.

4 Q. And I think you go back as far as a  
5 Docket 88 as maybe being the first docket that the  
6 Nicor method as it is today first began to evolve?

7 A. Yes.

8 Q. Okay. Now, you were not involved in  
9 Docket 88, whatever it was and the others.

10 Did you go back and look at those  
11 Commission orders as part of your analysis in this  
12 case?

13 A. Yes.

14 Q. Did you produce that information and work  
15 papers, if you know?

16 A. Let me clarify that I did in going to look  
17 for information regarding the specific DR request.  
18 That is the only thing. I did not actually look at  
19 them to produce testimony.

20 Q. Okay. But nonetheless, I mean, the Nicor  
21 method as it is today has evolved over the last 20,  
22 23 years, correct?

1           A.    Yes.

2           Q.    Now, even very recently in Docket 08-0363  
3    which involved the Nicor Gas rate case, again, the  
4    Nicor method was addressed, correct?

5           A.    It was.

6           Q.    And you were a witness in that case?

7           A.    I was.

8           Q.    And in that docket, there were differences  
9    of agreement between you and the company as it  
10   related to certain storage bank issues?

11          A.    Yes.

12          Q.    Storage bank access and a few other items  
13   relating to storage service and transportation  
14   services?

15          A.    Yes.

16          Q.    Okay. Now, I remember from reading your  
17   rebuttal testimony that you acknowledge the  
18   company's, what you referred to as operational  
19   differences and suggested that the company be  
20   required to perform a study that addressed the  
21   operational and performance issues that they were  
22   alluding to in the rate case as part of a study that

1       would come out later.

2                       Do you remember that?

3           A.   No.   Can you refer me to my testimony?

4           MR. FITZHENRY:   Well, let me just show you your

5   testimony since I'm probably not doing a good job

6   repeating it.

7                       May I approach the witness?

8           JUDGE YODER:   Yes.

9           MR. FITZHENRY:   This is a copy of your second

10   revised rebuttal testimony in the docket I referred

11   to.

12           JUDGE YODER:   Is this to refresh his

13   recollection?

14           MR. FITZHENRY:   Yes.

15           MR. OLIVERO:   Did you give a cite to a page

16   already?

17           MR. FITZHENRY:   Not yet.

18                       Look at page 3, line 66 through 70.

19   Give you a chance to look at that.

20                       Please look at page 22, lines 453

21   through 456, as well as lines 460 through 463.

22           A.   As well as -- what was the second

1 reference?

2 Q. The bottom of the page, 460 through 463.

3 A. Okay.

4 Q. Now, rather than go into great detail in  
5 the Nicor case, is it fair to say that in the Nicor  
6 case as is true in this case, both companies had  
7 differences of agreement with staff with regard to  
8 utilization of the storage fields, correct?

9 A. I'm not sure I would construe my testimony  
10 in this case, my position in this case, to be a  
11 difference of opinion of about how the fields are  
12 operated or utilized.

13 Q. Okay. Would it be fair to say that the  
14 company, Ameren Illinois has a different view about  
15 the economic impacts associated with your proposal  
16 regarding the use of the storage fields and how it  
17 proposes the use of the storage fields?

18 A. I guess I'm not -- your characterization of  
19 my testimony in this case I think is not precisely  
20 accurate, and what I mean is I've talked about how  
21 capacity is used and the storage fields, who they're  
22 used for, but the actual operational considerations

1 of those, you know, I've not had a disagreement about  
2 how they are performing or the operational  
3 characteristics of those fields.

4 Q. Well, for example, the issue surrounding  
5 critical day, the company has one position in this  
6 case and you have another position.

7 Would you categorize that as an  
8 operational issue, an economic issue?

9 How would you characterize the  
10 differences of opinion between you and the company?

11 A. I think there's both.

12 From an operational standpoint, I have  
13 recommended an expansion of critical day rights to  
14 the point where they are proportional with the  
15 withdrawal capabilities of the on-system storage, and  
16 that, to me, is a fairness issue to transportation  
17 customers.

18 The company's point and my  
19 understanding in their response is that there is not  
20 currently sufficient capacity available in the  
21 company's total portfolio, and they might have to add  
22 more capacity in order to make that capacity



1     available to transportation customers on a critical  
2     day, but that's not an operational issue per se.  
3     It's an economic issue because it's the sales  
4     customers who would end up picking up the tab for any  
5     expansions to off-system storage and capacity.

6           Q.    Okay.  Where I'm cleverly trying to go is  
7     where in the Nicor case you recommended a study.  I  
8     guess I'm curious to know why here where maybe  
9     they're not the same issues but they tend to surround  
10    the same kinds of concepts, use of storage and the  
11    debate between sales customers and transportation  
12    customers, have you given thought to recommending a  
13    study for Ameren Illinois?

14          A.    Right.  This specific study that I  
15    recommended, now that you've reminded me, that I  
16    recommended with regard to the Nicor case was the  
17    fact that they were only using about 135 VCF of the  
18    storage fields rated capacity of 150 VCF, so it was  
19    an underutilization of the storage field.  It was an  
20    operational issue which had economic consequences for  
21    the customers that were benefitting from the use of  
22    those fields.

1 Q. Right.

2 Now, here in this proceeding, the  
3 company's allocated storage to transportation  
4 customers is something over 5-BCF and now in your  
5 recommendation is 8 plus BCF?

6 A. Yes.

7 Q. And has the company expressed a view or  
8 concern about the ramifications associated with that  
9 increased availability of storage to transportation  
10 customers?

11 A. Specifically regarding the capacity, the  
12 company's position was put forth that the on-system  
13 storage capacity, it would not be advisable to have  
14 transportation customers have 47 percent of the  
15 on-system storage fields, but again, my feeling on  
16 that regard is that the gas in the on-system storage  
17 fields does not belong to one party or another, and  
18 therefore, from an operational standpoint, that is  
19 not a factor.

20 Q. Okay. But you talked about the need for  
21 excess capacity...

22 JUDGE YODER: I hate to break your train of

1     thought but I think we've lost the phone connection  
2     so if we could take a couple minute break.

3                                 (Pause)

4                 Q.    BY MR. FITZHENRY:  You talked about the  
5     company's position about using more storage capacity  
6     for transportation customers.

7                         Would you categorize that as maybe an  
8     operational issue, economic issue, one of the two or  
9     both?

10                A.    In my opinion, it's an economic issue.

11                Q.    Okay.  And what I'm saying is here in the  
12    Nicor case you recognize the company's use of the  
13    storage, your position, as warranting a study about  
14    these matters, and you haven't done so here.  I  
15    recognize that they're not the same issues, and I'm  
16    curious to know whether, one, did you ever first  
17    consider the need for such a study?

18                A.    No.

19                Q.    Okay.  Now, in the Nicor case too,  
20    recognizing there might be different, some different  
21    issues, you also suggested that the study be done in  
22    time for the next PGA case.

1                   Do you remember that? It's in your  
2 testimony now.

3           A.    Yes.

4           Q.    And what was your rationale in recommending  
5 the study be performed by that point in time?

6           A.    Because it seemed to me like it was a gas  
7 supply issue, and it would be more relevant to a PGA  
8 proceeding because of the gas that was actually not  
9 able to be put into storage or on system storage  
10 which would belong to the sales customers.

11          Q.    Okay. And the reason I asked these  
12 questions, it could very well be that the company  
13 might suggest a study would be warranted or the  
14 Commission itself might on its own suggest a study  
15 would be warranted and if the Commission did in this  
16 docket suggest a study be performed about the issues  
17 that we're talking about here, would you have a  
18 recommendation as to when that study should be  
19 prepared?

20          A.    No.

21          Q.    Okay. Now, looking at your rebuttal  
22 testimony, page -- bear with me one second. Okay.

1     Sorry.  Page 3 of your rebuttal testimony,  
2     Exhibit 29, and you say there at lines 59 through 61,  
3     you have another description, "The Nicor method is  
4     based upon the view that transportation customers are  
5     as important as sales customers and as such are  
6     afforded the same rights to storage capacity and  
7     storage deliverability on a peak day."

8                     Do you see that?

9             A.  Yes.

10            Q.  Now, would it be okay to categorize the  
11     sales customers collectively as one big  
12     transportation customer from the perspective of the  
13     company?

14                    Do you understand me?  That the  
15     company treats its sales customers as one big fat  
16     transportation customer.  Do you agree or disagree?

17            A.  I would disagree.

18            Q.  And why?

19            A.  Because sales customers don't make a  
20     nomination.

21            Q.  But the company as the marketer has to make  
22     those decisions for this one big fat transportation

1 customer.

2 A. The company does nominate gas for sales  
3 customers, yes.

4 Q. So you can draw an analogy between a  
5 company as being a marketer, supplier, whatever you  
6 want to call it, for the sales customers collectively  
7 as one transportation customer. You can see that,  
8 can't you?

9 A. Sure.

10 Q. All right. Then we have all these other  
11 transportation customers for which you've expressed  
12 concerns in your testimony, right?

13 A. Yes.

14 Q. All right. So let's think about this in  
15 terms of the one big fat transportation customer,  
16 it's got its marketer, Ameren Illinois, and all these  
17 other little transportation customers, and they have  
18 their marketers or they transport gas on their own  
19 and so forth.

20 Now, as between these two groups, the  
21 big fat transportation customer and all the other  
22 transportation customers, the rights that each group

1     has should be the same when it comes to storage,  
2     correct?

3             A.    Yes.

4             Q.    And one group should not be subsidizing  
5     another group, correct?

6             A.    Yes.

7             Q.    And each group should have the same amount  
8     of withdrawal rights when it comes to banking  
9     service?

10            A.    Yes.

11            Q.    And each group should have the same  
12    restrictions on a critical day?

13            A.    Yes.

14            Q.    And if there were a difference between  
15    these two groups, you wouldn't like that, would you?

16            A.    No.

17            Q.    Because they should be treated fairly?

18            A.    I think so.

19            MR. OLIVERO:  Mr. Sackett, could you speak up a  
20    little louder?

21            MR. FITZHENRY:  He said he agreed with  
22    everything I asked him.

1           MR. OLIVERO: That's not what I think I heard.

2           Q. BY MR. FITZHENRY: Okay. Let's talk about  
3 some testimony here.

4                   The Nicor method, your method,  
5 allocates or gives rights to about 32 percent of the  
6 company's system storage, is that right?

7           A. Yes.

8           Q. Now, is that 32 percent fixed or can the  
9 transportation customers take a range of system  
10 storage as a group?

11          A. Under my proposal?

12          Q. Under your proposal.

13          A. Yes, they would be allowed to select up to  
14 that amount.

15          Q. Right. And they could take as little as  
16 five percent as a range of transportation or bank  
17 services that they could take, correct, 5 to 32  
18 percent? That's what I've been told. Would that be  
19 right? 0 to 32 percent?

20          A. Yes. You've got daily balance customers  
21 which are allowed up to, from 0 up to the 32 --  
22 sorry -- from 0 to 10 days of bank or 15 under my



1     proposal.

2             Q.    All right.    So they could --

3             A.    So...

4             Q.    I'm sorry.

5             A.    So monthly balance customers would be five

6    days of bank up to 15.

7             Q.    Got it.

8                         So they could take up to 32 percent?

9             A.    As a group.

10            Q.    As a group.   And my bag fat transportation

11   customer gets the difference, 68 percent?

12            A.    That's correct.

13            Q.    Now, what happens if the individual

14   transportation customers you're talking about decide

15   to take 20 percent and my big fat transportation

16   customer takes 40 percent.   Who's going to pay for

17   the difference, the cost associated with the

18   remaining storage services that are being paid for

19   somehow some way?

20            A.    Sales customers would.

21            Q.    They are.   And do you conclude that to be a

22   fair result?

1           A.    Yes.

2           Q.    And why is that?

3           A.    I think it's fair, well, it's as fair under

4 my proposal as it is under Ameren's proposal which

5 has the same facet and it's describable bank, that's

6 what you're going to have. Any portion of that bank

7 that's not utilized by transportation customers by

8 default gets picked up by the sales customers.

9           Q.    All right. So let's assume that my big fat

10 transportation customer uses 58 percent and your

11 transportation customers use 20 percent. Who's going

12 to pick up the 22 percent difference, my guys or your

13 guys?

14          A.    Your guys are.

15          Q.    Even though your guys had a chance to take

16 to take up to 32 percent?

17          A.    Right.

18          Q.    Okay. Some more mundane questions.

19                    Would you agree that one of the

20 purposes or function of a gas distribution system is

21 to move gas from one point to another?

22          A.    Yes.

1           Q.    Okay.  And would you agree the  
2   functionality of the gas pipeline, this movement of  
3   gas supply that we're talking about, can be affected  
4   by the size of the pipe?

5           A.    Yes.

6           Q.    All right.  And is the flow of the gas in  
7   the pipeline affected by pressure?

8           A.    I'm not an engineer but that's my  
9   understanding, yes.

10          Q.    Okay.  And does it matter where you are on  
11   the pipe in terms of the kind of pressure, the amount  
12   of pressure that is being used to deliver gas to you?  
13   If you're at the beginning of the pipe where it's  
14   coming in from the interstate pipeline as opposed to  
15   the end, is there a pressure differential?

16          A.    I don't know.

17          Q.    Okay.  Would you agree that a gas  
18   pipeline's proximity to an interstate pipeline  
19   affects the pressure and flow of the gas in the pipe?

20          A.    I don't know.

21          Q.    Are you familiar with, are you generally  
22   familiar with the gas pipeline systems of the

1 Northern Illinois Gas utilities, Nicor, Peoples,  
2 North Shore?

3 A. Generally, yes.

4 Q. Okay. Do you know what the Chicago hub is?

5 A. Generally, yes.

6 Q. What's your understanding?

7 A. Chicago hub is where a series of pipelines  
8 meet in the Chicago area to deliver natural gas to  
9 consumers there.

10 Q. All right. Do you believe that that  
11 creates a benefit to the customers in the Chicago  
12 area by having the hub in near proximity to where  
13 they're taking gas?

14 A. Yes.

15 Q. As compared to downstate Illinois?

16 A. Sure.

17 Q. Would you categorize that difference, that  
18 is, the ability to take gas from the Chicago hub  
19 versus taking gas down in Metropolis, Illinois, as  
20 being an operational difference?

21 A. Yes.

22 Q. Now, you're aware, are you not,

1     Mr. Sackett, that the three Illinois utilities  
2     emerged last year in August or October 2010?

3             A.    Yes.

4             Q.    Now, it's true, is it not, that each one of  
5     those gas pipeline or distribution systems were  
6     constructed independent of each other?

7             A.    That's my understanding.

8             Q.    Right.  So they were all three separate  
9     Illinois utilities, right?

10            A.    Yes.

11            Q.    And they all built their gas distribution  
12    system based on the needs in their service area,  
13    correct?

14            A.    Yes.

15            Q.    As it stands today, do you have any reason  
16    to believe that those three different gas  
17    distribution systems are integrated?

18            A.    No.

19            Q.    They're not, are they?

20            A.    I don't know, but I don't believe that they  
21    are.

22            Q.    Okay.  Now, going back to your Nicor method

1 or your proportionality method, you're applying that  
2 Nicor method to Ameren Illinois as if it was a  
3 totally integrated system, are you not?

4 A. Yes.

5 Q. Stated differently, you're not applying it  
6 to the former CILCO distribution system, the former  
7 IP distribution system, and the former CIPS  
8 distribution system?

9 A. No.

10 Q. Right.

11 A. When I did that, we did this and we looked  
12 at it in the workshop. In the last case when I  
13 presented my testimony, I did the calculations to  
14 show what those calculations would be for all of the  
15 three utilities.

16 When we came into the workshops as  
17 ordered by the Commission, we looked at what those  
18 would be for all three utilities, and Ameren  
19 indicated that they wanted to move ahead with a  
20 single size bank, an application of that to the whole  
21 system. They proposed in their own direct case in  
22 this proceeding to go ahead and have a single bank

1 size for the whole entity.

2 Q. Okay.

3 A. So my proposal in this case reflects what I  
4 believed to be Ameren's preference for a single size  
5 bank for its transportation customers.

6 Q. Well, is there a difference between bank  
7 and storage services?

8 A. Yes.

9 Q. Okay. So when Ameren was advocating a  
10 certain uniform bank service across the three former  
11 legacy utilities, it wasn't necessarily advocating  
12 the same rights to storage for transportation  
13 customers as it would for sales customers. They are  
14 different issues, are they not?

15 A. I think that there's a nuance there that  
16 there may be some difference between how the two are  
17 interpreted by various parties here, but I think that  
18 from an operational standpoint, the proposals are  
19 very similar with the exception that I've proposed  
20 that those storage -- that the banks under the Nicor  
21 method be required to be filled and that the bank in  
22 my proposal is 50 percent larger than the bank under

1 Ameren's proposal.

2 Q. Right.

3 In your testimony, you even note that

4 I think it's AmerenCIPS has no storage fields, right?

5 A. Can you direct me in my testimony?

6 Q. Oh, I knew you were going to ask that.

7 Well, it is in your testimony, but I

8 can go on and let's assume that in one of the legacy

9 companies service areas, there are no storage fields.

10 A. I believe what I said was that one of the

11 legacy utilities had less storage, on-system storage

12 than the other two.

13 Q. All right. Less or none, but we'll worry

14 about that later.

15 But nonetheless, that difference

16 doesn't affect your proportionality argument,

17 correct?

18 A. No.

19 Q. Right. You didn't alter in any way, take

20 that into account? Another way of asking the

21 question.

22 A. No, because the gas the transportation



1 customers are putting into their banks is not going  
2 into a specific asset. In fact, you know, the  
3 witness earlier testified that it may go a variety of  
4 places, but it's not necessarily going into on-system  
5 storage.

6 Q. Right. But on-system storage provides  
7 benefits to a gas distribution system that are  
8 different than if you didn't have on-system storage  
9 with regards to the gas distribution system. I mean,  
10 there are operational differences between the two,  
11 are there not?

12 A. Yes.

13 Q. There has to be.

14 And as a result of the operational  
15 differences, there's going to be economic  
16 consequences, correct? There has to be.

17 A. I'm not sure I understand your question.

18 Q. Well, to your thinking, what does a storage  
19 field do for a company? What advantages does it  
20 bring to providing service to its customers?

21 A. I think it has several basic functions.

22 One is to provide peak day deliverability on design

1 peak day or critical day; two to provide a seasonal  
2 hedge, provide the ability to store gas during the  
3 summer and withdraw that gas in the wintertime.

4 Q. Right. And if you didn't -- I'm sorry.  
5 Are you finished?

6 A. That's fine.

7 Q. And if you don't have that storage  
8 facility, then your seasonal hedges are affected,  
9 right?

10 A. Right.

11 Q. They have to be. And your peak day  
12 deliverability, that value, whatever it is, has to be  
13 affected, right?

14 A. Right.

15 Q. It has to be.

16 A. So are you asking me a hypothetical  
17 question then about a utility that has no on-system  
18 storage fields?

19 Q. Okay. If it had very little, whatever that  
20 means to you, and you talk about that in your  
21 testimony, it still, nonetheless, would have some  
22 bearing on seasonal hedging.

1           A.    Yes, there would be a value.

2           Q.    All right.  Thanks.

3                    Now, you were a witness in the

4 company's 2007 case, were you not?

5           A.    Yes.

6           Q.    And do you recall that there was evidence

7 in that case regarding what were termed captive

8 systems?

9           A.    Yes.

10          Q.    All right.  And just for the benefit of the

11 judge, could you just kind of tell us what your view

12 of the captive system is?

13          A.    My understanding of the captive system are

14 those systems where there's a load that's only

15 supplied by a limited or a single source of supply.

16          Q.    And there are captive systems on the Ameren

17 Illinois gas distribution system, correct?

18          A.    That's my understanding, yes.

19          Q.    Right.  And in the '07 case, the discussion

20 around those captive systems had bearing on OFOs

21 (operational flow orders) and critical days?

22          A.    I'm not sure about that.

1           Q.   All right.  I'm going to show you a portion  
2   of the order and see if that refreshes your memory.  
3   Take your time and go through a few pages there and  
4   kind of glance through.

5                   And, just for the record, I'm showing  
6   the witness a portion of the Commission's final order  
7   in Docket 07-0585 dated September 24, 2008, and the  
8   pages are 343 through 346, top of 346.

9           A.   Is there a particular portion of this that  
10   you want me to...

11          Q.   Yes, sir.  I'd like you to specifically  
12   look at page 345, the third paragraph, third full  
13   paragraph.

14          A.   Yes.

15          Q.   Okay.  And all I'm trying to convey to you  
16   is at least in that docket, there were concerns  
17   expressed by the company that declaring an  
18   operational flow order or critical day could have  
19   been problematic with regard to captive systems,  
20   right?

21          A.   Yes.

22          Q.   And the Commission ordered the company in

1     its next rate filing to identify those captive  
2     systems, correct?

3             A.     That's correct.

4             Q.     Now, in your analysis and in the  
5     preparation of your testimony in this case, did you  
6     take into consideration those captive systems and how  
7     they might be affected by your proportional method or  
8     the Nicor method?

9             A.     Yes, I did.

10            Q.     So could you tell us where the captive  
11     systems are located?

12            A.     No, I cannot.

13            Q.     Did you look at a map?

14            A.     No, I did not.

15            Q.     You don't know where they are physically?

16            A.     Not specifically, no.

17            Q.     Okay. In what way did you consider the  
18     captive systems?

19            A.     I considered the captive systems with  
20     respect to the way that Ameren proposed a single size  
21     bank for all the utilities and expanded, the bank, as  
22     I pointed out in my testimony, or a customer within

1     these captive systems could select up to 22 days of  
2     bank. That was their initial proposal, and my  
3     analysis was that if captive systems were really an  
4     issue, that Ameren would not have proposed to allow  
5     those particular customers to select up to 22 days of  
6     bank which, according to their own analysis, it would  
7     not be able to support.

8           Q. Well, isn't it your proposal to take 2.2  
9     percent, multiply it by the 22 days of bank, and  
10    that's what the transportation customer can take on a  
11    critical day?

12           A. Yes.

13           Q. So now a transportation customer on a  
14    critical day is taking 32 or 33 percent, not 20  
15    percent on a critical day?

16           A. Right.

17           Q. That's not the company's proposal, is it?

18           A. No.

19           Q. That's your proposal?

20           A. Yes.

21           MR. FITZHENRY: Thank you, Mr. Sackett. You've  
22    been very cooperative.

1                   We have, as Ms. Von Qualen noted at  
2     the outset, agreed to data request responses to move  
3     into the record, and we can take care of that at some  
4     point.

5           JUDGE YODER: Will this be filed on e-Docket or  
6     are you filing them now?

7           MR. KENNEDY: It was our understanding that the  
8     court reporter was filing the exhibits.

9           JUDGE YODER: It makes a difference where I put  
10    them on. Okay.

11                                 (Recess taken.)

12          JUDGE YODER: Back on the record.

13                   I understand we had a cross exhibit to  
14    tender in lieu of some cross.

15          MR. FITZHENRY: Yes. Mr. Kennedy is going to  
16    walk us through that process.

17          MR. KENNEDY: As Mr. Fitzhenry indicated, staff  
18    and the company have agreed to admit some of  
19    Mr. Sackett's responses to the company's data  
20    requests.

21                                 Those are AIC Staff 7.23, AIC Staff  
22    7.21, AIC Staff 7.19, AIC Staff 7.17, AIC Staff 7.13,

1     AIC Staff 7.10, AIC Staff 7.09, and AIC Staff 7.08.  
2     These have been marked AIC Cross Exhibit 9.

3             JUDGE YODER: All right. Do you want them in  
4     that order and can I flip them around?

5             MR. KENNEDY: You can flip them.

6             JUDGE YODER: Any objection to the admission of  
7     Ameren Cross Exhibit 9, responses to data requests?

8             MR. OLIVERO: No.

9             JUDGE YODER: All right. Then Ameren Cross  
10    Exhibit 9 will be admitted into evidence in this  
11    docket.

12                             (Whereupon Ameren Cross Exhibit  
13                             9 was admitted into evidence at  
14                             this time.)

15            MR. FITZHENRY: Thank you.

16            JUDGE YODER: Is there any redirect of  
17    Mr. Sackett?

18            MR. OLIVERO: No redirect of Mr. Sackett.

19            JUDGE YODER: All right. Then thank you,  
20    Mr. Sackett. You may depart.

21                             (Witness excused.)

22            MR. OLIVERO: Then before we start our next



1 witness, we had another cross exhibit that we were  
2 wondering if we could move into evidence.

3 JUDGE YODER: Okay. Well, let me handle  
4 Mr. Sackett's testimony before I get confused.

5 Is there any objection to the  
6 admission of Staff Exhibit 13, the direct testimony  
7 of Mr. Sackett with attachment, and Staff Exhibit 29,  
8 the rebuttal testimony of Mr. Sackett with  
9 attachment.

10 MR. FITZHENRY: No, there's not.

11 JUDGE YODER: All right. Then those will be  
12 admitted into evidence then in this docket.

13 (Whereupon Staff Exhibit 29 was  
14 admitted into evidence at this  
15 time.)

16 JUDGE YODER: Go ahead, Mr. Olivero.

17 MR. OLIVERO: Thank you, Your Honor.

18 Ameren and staff have agreed to  
19 stipulate into the record the admission of DLH 2.12  
20 and data response DLH 2.12S, and we will identify  
21 these as Staff Cross Exhibit No. 13 I believe is the  
22 next, and we will file those. We don't have hard

1       copies but we'll just file those electronically.

2               JUDGE YODER:   Could you read for me those

3       data -- DLH, was it 1.12?

4               MR. OLIVERO:   DLH 2.12.

5               JUDGE YODER:   Okay.   And what was the other

6       one?

7               MR. OLIVERO:   DLH 2.12S.

8               JUDGE YODER:   All right.

9                       Any objection to the admission of

10       Staff Cross Exhibit -- I'm sorry.   Was it 13?

11               MR. OLIVERO:   Staff Cross Exhibit 13, correct.

12               JUDGE YODER:   -- Staff Cross Exhibit 13 which

13       are responses to the data requests DLH 2.12 and 2.12?

14               MR. KENNEDY:   No objection.

15               JUDGE YODER:   All right.   Without objection,

16       that cross exhibit will be admitted into evidence in

17       this docket.

18                               (Whereupon Staff Cross Exhibit

19                               13 was admitted into evidence at

20                               this time.)

21               MR. KENNEDY:   And then just one more thing of

22       homework.

1                   We have agreed to waive the cross of  
2   Mr. Effron in exchange of an agreement with AG/CUB to  
3   introduce certain data requests. This is going to be  
4   AIC Cross Exhibit 10.

5                   (Whereupon AIC Cross Exhibit 10  
6                   was marked for identification as  
7                   of this date.)

8           MR. KENNEDY: And the numbers are AIC AG/CUB  
9   Data Request 1.01, 1.06, 1.08, 1.09, 1.10, 1.12,  
10   1.13, 1.14, 1.15, 1.16, 1.17, and 1.20.

11           JUDGE YODER: All right. Is there any  
12   objection to the admission of Ameren Cross  
13   Exhibit 10?

14           MS. YU: No objection, Your Honor.

15           JUDGE YODER: All right. That will be  
16   admitted.

17                   (Whereupon Ameren Cross Exhibit  
18                   10 was admitted into evidence at  
19                   this time.)

20           JUDGE YODER: And is the next witness  
21   Ms. Seckler?

22           MS. SECKLER: Yes.

1 JUDGE YODER: Ms. Seckler, for the record, were  
2 you previously sworn?

3 MS. SECKLER: Yes.

4 JUDGE YODER: All right. Thank you.

5 VONDA SECKLER

6 called as a witness herein, on behalf of Ameren  
7 Illinois Company, having been first duly sworn on her  
8 oath, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. FITZHENRY:

11 Q. Good afternoon, Ms. Seckler.

12 Would you please state your name and  
13 business address?

14 A. Vonda (V-o-n-d-a) Seckler (S-e-c-k-l-e-r),  
15 1901 Chouteau, St. Louis, Missouri.

16 Q. And on whose behalf are you testifying in  
17 this docket?

18 A. Ameren Illinois Company.

19 Q. And what is your title with the company?

20 A. Managing executive of gas supply.

21 Q. Okay. Thank you.

22 Have you caused to be prepared for

1 admission into the record in this proceeding certain  
2 testimonies and exhibits?

3 A. Yes.

4 Q. Okay. I show you what's been marked for  
5 identification as Ameren Exhibit 15.0G titled "Direct  
6 Testimony of Vonda K. Seckler" and ask if that is the  
7 direct testimony you intend to have admitted?

8 A. Yes.

9 Q. And that testimony contains certain  
10 confidential and proprietary information?

11 A. Yes.

12 Q. And in support or in addition to your  
13 direct testimony, is it correct you also sponsor  
14 Ameren Exhibits 15.1G through 15.5G?

15 A. Yes.

16 Q. And those exhibits were prepared by you or  
17 under your direction and supervision?

18 A. Yes.

19 Q. And is it correct that Ameren Exhibit 15.1G  
20 also contained certain confidential proprietary  
21 information?

22 A. Yes, it does. And 15.4G is Second Revised.

1 Q. That's correct. Thank you for that.

2 Now, have you also caused to be  
3 prepared for admission into the record rebuttal  
4 testimony identified for the record as Ameren  
5 Exhibit 35.0 Revised?

6 A. Yes.

7 Q. And does that testimony also contain  
8 certain confidential proprietary information?

9 A. Yes, it does.

10 Q. And in support of your revised rebuttal  
11 testimony, are you also sponsoring certain exhibits,  
12 Ameren Exhibit 35.1 and 35.2?

13 A. Yes.

14 Q. And those exhibits were prepared by you,  
15 ma'am, or under your supervision?

16 A. Yes.

17 Q. And Ameren Exhibit 35.1 also contains  
18 certain confidential proprietary information?

19 A. Yes, it does.

20 Just to be clear, 35.2 is a data  
21 request from staff that we're including.

22 Q. Yes. And now also turning your attention,

1     you've also prepared surrebuttal testimony, is that  
2     right?

3             A.     That's correct.

4             Q.     And that's been identified for the record  
5     as Ameren Exhibit 52.0 Revised?

6             A.     Yes.

7             Q.     And also in support -- that's the only --  
8     there's no other exhibit with that testimony, is that  
9     right?

10            A.     That's correct.

11            Q.     Okay.  So, Ms. Seckler, if I were to ask  
12     you all the questions that were set forth in the  
13     various testimonies I've identified, would you give  
14     the same answers as you have listed in the  
15     testimonies?

16            A.     Yes, I would.

17            MR. FITZHENRY:  Okay.  Your Honor, at this  
18     point in time, we'd move for admission of  
19     Ms. Seckler's testimony and exhibits as I've  
20     identified and tender her for cross-examination.

21            JUDGE YODER:  All right.  We will rule on  
22     admissibility following cross.

1 I believe RGS has reserved cross.

2 Mr. Townsend?

3 MR. TOWNSEND: Thank you very much, Your Honor.

4 Chris Townsend appearing on behalf of

5 the Retail Gas Suppliers. They're comprised of

6 Interstate Gas Supply of Illinois, Inc. and Dominion

7 Retail, Inc.

8 Good afternoon, Ms. Seckler.

9 THE WITNESS: Good afternoon.

10 CROSS-EXAMINATION

11 BY MR. TOWNSEND:

12 Q. You're the managing executive of gas supply

13 at Ameren Illinois Company, right?

14 A. That's right.

15 Q. If I refer to Ameren, would you understand

16 that unless I indicate otherwise, I'm referring to

17 Ameren Illinois Company?

18 A. Sure.

19 Q. In that role, you manage the daily

20 operations and business activities related to

21 providing gas supply to Rate Zone 1 and Rate Zone 2,

22 correct?



1           A.    That's correct.

2           Q.    And what are Rate Zone 1 and Rate Zone 2?

3           A.    Rate Zone 1 is the former company

4   AmerenCIPS, and Rate Zone 2 is the former company

5   AmerenCILCO.

6           Q.    And in that role, your responsibilities

7   include gas supply acquisition, price hedging,

8   transportation and storage capacity acquisition,

9   system operations, and state and federal regulatory

10   affairs, correct?

11          A.    Correct.

12          Q.    You're Ameren's lead witness on the mass

13   market natural gas choice issues, right?

14          A.    Yes.

15          Q.    You're familiar with the retail gas

16   suppliers, correct?

17          A.    The retail gas suppliers of your clients?

18          Q.    Yes.

19          A.    Yes.

20          Q.    And you understand that RGS consists of

21   Interstate Gas Supply of Illinois, Inc. and Dominion

22   Retail, Inc., right?

1           A.    Correct.

2           Q.    And you understand that IGS and Dominion  
3   are certified alternative retail gas suppliers or  
4   ARGS here in Illinois, right?

5           A.    Yes.

6           Q.    And you understand that alternative retail  
7   gas suppliers act as competitive suppliers to  
8   customers, right?

9           A.    Right.

10          Q.    In particular, they provide commodity  
11   supply to residential and small commercial customers,  
12   right?

13          A.    Natural gas commodity, yes.

14          Q.    When I refer to a small volume choice  
15   program or a retail choice program or a mass market  
16   choice program, can we agree that I'm referring to a  
17   program where residential and small commercial  
18   customers choose the supplier of their natural gas  
19   from a group of participating competitive suppliers  
20   rather than just taking bundled service from the  
21   public utility?

22          A.    I would agree that that is what it is in

1 the Northern Illinois Utilities. The Ameren Illinois  
2 Utilities already have a customer choice program for  
3 small commercial customers, so in our case, I believe  
4 that we're just discussing a choice for residential  
5 customers.

6 Q. The RGS proposal includes a recommendation  
7 that we look at a mass market program for both  
8 residential and small commercial, correct?

9 A. I'm not sure that that's clear.

10 Q. Is that one of the issues that perhaps  
11 could be addressed within a workshop program that  
12 we've discussed?

13 A. That is one of the issues that would need  
14 clarified.

15 Q. Now, bundled service from the utility has  
16 two distinct components -- the commodity component  
17 and the distribution component, correct?

18 A. Yes.

19 Q. And just so we're clear, when we're  
20 referring to a mass market choice program during this  
21 cross-examination, we'll be referring to a choice  
22 program involving residential and small commercial.

1       Is that all right?

2           A.    Okay.

3           Q.    And if you need to break those out between

4       the two, if you could do that, I'd appreciate it.

5           A.    Sure.

6           Q.    In certain places in your testimony, you

7       refer to a residential gas customer choice program.

8                       Did you intend to exclude small

9       commercial customers from your testimony?

10          A.    I did since Ameren already has a small

11       commercial gas choice program that they're eligible

12       to take commodity supply from other suppliers at

13       issue, and my testimony would just be a residential

14       gas choice program.

15          Q.    The other mass market choice programs that

16       exist currently in Illinois do have both the

17       residential and small commercial components combined,

18       correct?

19          A.    The Nicor and Peoples, is that the programs

20       you're referring to?

21          Q.    As well as North Shore.

22          A.    Yes, they do.

1           Q.    And with the mass market choice programs,  
2   residential and small commercial customers can obtain  
3   the commodity of natural gas from an alternative  
4   supplier, correct?

5           A.    That's correct.

6           Q.    And the utility still provides the  
7   distribution service, right?

8           A.    Yes.

9           Q.    And IGS has been an active participant in  
10   the competitive gas market in Illinois for nearly ten  
11   years, right?

12          A.    I'm assuming that that's correct, yes.

13          Q.    That's what you saw in Mr. Crist's  
14   testimony?

15          A.    Yes.

16          Q.    And likewise, Dominion has been an active  
17   participant for nearly ten years in the residential  
18   and small commercial competitive gas markets in  
19   Illinois, right?

20          A.    I believe so.

21          Q.    And just to be clear, those are the markets  
22   in northern Illinois because at present, there is no

1 residential gas choice program in the Ameren service  
2 territory, right?

3 A. Correct.

4 Q. So IGS currently serves customers in Nicor,  
5 Peoples Gas, and North Shore Gas service territories,  
6 right?

7 A. Correct.

8 Q. IGS also serves customers in competitive  
9 natural gas markets in eight other states including  
10 17 different public utility service territories,  
11 right?

12 A. I believe so.

13 Q. And similarly, Dominion has been a gas  
14 supplier since the early 2000s in Illinois and  
15 currently serves approximately 40,000, mostly  
16 residential, customers in Illinois, right?

17 A. I believe so.

18 Q. Now, again, those customers are not in  
19 Ameren's service territory, right?

20 A. Correct.

21 Q. And Dominion also operates in other states,  
22 correct?

1           A.    Yes.

2           Q.    They serve over a half million customers in  
3   Pennsylvania, Ohio, New Jersey and New York, right?

4           A.    I believe so.

5           Q.    Now, let's discuss choice a little bit more  
6   specifically.

7                   Ameren already has a choice program  
8   for nonresidential customers, right?

9           A.    Yes.

10          Q.    And how long has Ameren had that program in  
11   place?

12          A.    Since the mid to late 1980s.

13          Q.    Did Ameren conduct a customer survey prior  
14   to implementing its choice program for nonresidential  
15   customers?

16          A.    I don't know.

17          Q.    Does Ameren typically conduct customer  
18   surveys prior to revising its tariffs?

19          A.    I don't know.

20          Q.    Are you aware of any customer surveys that  
21   Ameren conducted prior to offering revisions to its  
22   tariffs in any of the proceedings that you've been

1 involved in?

2 A. I know we had a customer survey when we  
3 changed some of our current Rider T provisions to our  
4 commercial and industrial customers.

5 Q. And when was that?

6 A. That was -- well, I believe we've done a  
7 couple of those. I know we did one before the last  
8 rate case in 2009.

9 Q. Is it the company's policy to always  
10 conduct those surveys prior to making tariff changes?

11 A. I don't believe it is.

12 Q. Let's focus now on mass market choice. You  
13 testified that Ameren is not opposed to residential  
14 natural gas choice, right?

15 A. That's correct, as long as these things  
16 that I indicated, that the benefits outweigh the cost  
17 and there is customer interest and there's full cost  
18 recovery of the cost, we would not oppose residential  
19 gas choice program.

20 Q. Would that be true both for a residential  
21 natural gas choice program as well as a mass market  
22 natural gas choice program, that is, one that



1 includes both the residential and a small commercial  
2 component?

3 A. I strictly focus on the residential because  
4 we already have a small commercial choice program.

5 Q. If the Commission were to direct the  
6 company to hold workshops including both small --  
7 strike that.

8 If the Commission were to direct the  
9 company to hold workshops to address a mass market  
10 program that included both small commercial and  
11 residential components, would the company object?

12 A. The company would certainly abide by any  
13 direction the Commission ordered us.

14 MR. TOWNSEND: May I approach, Your Honor?

15 JUDGE YODER: Yes.

16 Are you wishing to have this marked?

17 MR. TOWNSEND: I hand you what's being marked  
18 as RGS Cross Exhibit No. 2.

19 (Whereupon RGS Cross Exhibit 2  
20 was marked for identification as  
21 of this date.)

22 MR. FITZHENRY: Could I just have a moment off

1 the record with Mr. Townsend because there's a  
2 difference of minds in terms of the questions that  
3 are being asked and answered.

4 JUDGE YODER: Sure.

5 (Whereupon Mr. Fitzhenry and  
6 Mr. Townsend stepped out of the  
7 room momentarily.)

8 JUDGE YODER: Go ahead.

9 MR. TOWNSEND: Thank you, Your Honor.

10 Q. Ms. Seckler, I'd like to reset where we're  
11 at in terms of the discussion just so kind of as the  
12 base we're in agreement.

13 The company currently has a  
14 transportation program that is available to all  
15 nonresidential customers, correct?

16 A. That's correct.

17 Q. And you understand that there is a proposal  
18 that's being put forward by RGS that would include  
19 both residential and small commercial customers in a  
20 choice program, right?

21 A. Yes.

22 Q. And so when we talk about the choice

1     program for the mass market, can we agree that we're  
2     talking about a residential and small commercial  
3     choice program?

4             A.     Sure.

5             Q.     And Ameren does not oppose developing a  
6     mass market choice program that includes both  
7     residential and small commercial customers, assuming  
8     that those preconditions that you previously  
9     identified have been satisfied, right?

10            A.     I don't know. That's one of the issues  
11     that would need to be determined since we already  
12     have a Rider T program where small commercial  
13     customers and all commercial industrial customers can  
14     elect an alternative gas supplier that would need to  
15     be figured out if the mass market program that would  
16     be ordered potentially in this rate case would  
17     include small commercial customers.

18            Q.     All right. You did not raise that as an  
19     issue in your testimony trying to draw the  
20     distinction between residential and small commercial  
21     customers, did you?

22            A.     I did not specifically raise that although

1 most of my answers and responses to data requests  
2 specifically identified residential gas customers.

3 Q. In response to IGS Data Request 2.01, that  
4 indicates that Ameren -- the question is whether  
5 Ameren supports competition for supply of its  
6 residential natural gas customers, correct?

7 A. That is the question, yes.

8 Q. All right. Would your answer be different  
9 if the question were does Ameren support competition  
10 for mass market residential and small commercial  
11 natural gas customers?

12 A. My answer would only be different to the  
13 extent that we already have a program for small  
14 commercial customers so some of the things identified  
15 have already been determined.

16 Q. Would it be correct to say that Ameren is  
17 not planning to develop a mass market natural gas  
18 choice program unless directed to do so by the  
19 Commission or mandated by legislation?

20 A. Yes, that's correct.

21 Q. So you fully agree that the Commission has  
22 the authority to direct Ameren to implement a mass

1 market choice program?

2 A. Yes; in my layperson's opinion, yes, they  
3 would.

4 Q. And you agree that legislation is not  
5 required for Ameren to implement a mass market choice  
6 program?

7 A. Yes.

8 Q. And the choice programs, the mass market  
9 choice programs for Peoples, Nicor, North Shore, they  
10 all were developed without legislation requiring that  
11 the utilities create a mass market choice program,  
12 correct?

13 A. I do not know that.

14 Q. Are you aware of any legislation that  
15 required any Illinois utility to create a mass market  
16 choice program?

17 A. I'm not aware of any, no.

18 Q. Now, in this case, you raised some  
19 questions and pointed to some issues about a mass  
20 market choice program that would need be addressed to  
21 implement such a program, correct?

22 A. I raised issues that would need to be

1 addressed to determine if we even should offer one  
2 and how to implement it and actually the design of  
3 one if it was determined to implement one.

4 Q. And there has been some back and forth  
5 between yourself and RGS witness Mr. Crist on many of  
6 those issues, right?

7 A. Can you identify back and forth?

8 Q. He's provided testimony on the issues; you  
9 have provided testimony on the issues; you've  
10 exchanged data requests with regards to those issues.

11 A. Yes.

12 Q. I want to discuss a little bit about what a  
13 mass market natural gas choice program would entail.

14 There's several issues on which Ameren  
15 agrees with RGS in the proposal, correct?

16 A. Yes, there are issues we agree on.

17 Q. Ameren agrees with RGS that Ameren should  
18 fully recover all reasonable and prudent costs in  
19 support of a mass market natural gas choice program,  
20 correct?

21 A. Yes.

22 Q. Ameren also generally agrees that there

1     should be a price to compare as part of a mass market  
2     natural gas choice program, right?

3             A.    Yes.

4             Q.    And Mr. Crist has recommended that the  
5     issues related to the development of a mass market  
6     choice program be addressed in a workshop setting,  
7     correct?

8             A.    Yes, that was his recommendation.

9             Q.    And do you understand RGS's current  
10    proposal is for the Commission to require that within  
11    one month of entry of a final order in this  
12    proceeding, staff and the interested parties begin a  
13    six-month workshop process that will provide market  
14    recommendations and mass market choice tariffs for  
15    Commission approval?

16            A.    That was what he stated as his  
17    recommendation, yes.

18            Q.    And you say that Ameren is not opposed to  
19    residential natural gas choice, right?

20            A.    Yes, that's what I said with the  
21    stipulations that I had identified and are in your  
22    exhibit, your DR that I responded to that you just

1 admitted into evidence.

2 Q. All right. But in your testimony, you  
3 provided some concerns that Ameren has regarding the  
4 design and the implementation of the program, right?

5 A. That is some of the concerns that I  
6 identified.

7 I also identified a concern that we  
8 have not had any residential customers request a  
9 competition for supply for Ameren Illinois, and that  
10 would also be one of the concerns that we identified.

11 Q. You're not suggesting that that's a  
12 precondition to moving forward with such a program,  
13 are you?

14 A. I'm suggesting that from the company's  
15 point of view, that is an important fact; that the  
16 Commission should consider to order us to implement a  
17 program if there is interest in such program.

18 If there is not interest in such a  
19 program, it doesn't seem that the company spending  
20 cost to implement a program would be a prudent  
21 decision.

22 Q. So, I'm sorry, I'm not sure I understand



1 your answer to the question.

2 Is it a precondition or is it not a  
3 precondition?

4 A. A precondition for what? Could you --

5 Q. Implementing a mass market natural gas  
6 choice program.

7 A. I think customer interest is an important  
8 fact that should be considered when determining if an  
9 implementation, if, to be ordered, a gas residential  
10 choice program should be implemented.

11 Q. I understand you think it's important, but  
12 the question is, if that doesn't exist, are you  
13 saying that the program should not go forward? Is  
14 that a litmus test I guess is another way to...

15 A. Of course, the company will do whatever the  
16 Commission orders us to do, but with the lack of  
17 customer interest, I don't believe that we will be  
18 implementing a program without that order.

19 Q. I'm sorry. You wouldn't implement it  
20 without the order, but if the Commission moves  
21 forward with an order, the fact that that didn't  
22 exist wouldn't prevent Ameren from moving forward

1 with the program, correct?

2 A. That's correct. We would abide by any  
3 order that the Commission would give to us.

4 MR. TOWNSEND: May I approach Your Honor?

5 JUDGE YODER: Yes.

6 (Whereupon RGS Cross Exhibit 3  
7 was marked for identification as  
8 of this date.)

9 Q. I'll hand you what's been marked as RGS  
10 Cross Exhibit 3, and that's your response to RGS Data  
11 Request 5.01, correct?

12 A. Yes.

13 Q. And in that response, you indicate that  
14 workshops would establish a viable forum to address  
15 all issues relating to residential choice program,  
16 correct?

17 A. Yes. Specifically, my answer is if  
18 workshops are ordered by the Commission, all issues  
19 identified should be addressed.

20 Q. And you would agree that all interested  
21 stakeholders should participate in the workshop  
22 process, correct?

1           A.    Yes.

2           Q.    And you would agree that a framework for  
3   designing and implementing a mass market choice  
4   program could be obtained during the workshop  
5   process, right?

6           A.    Yes, I believe a framework could be  
7   obtained. I don't believe that all detailed issues  
8   would be resolved in a workshop setting.

9           Q.    That is to say at the end of the workshop,  
10   there may still be issues that people don't agree  
11   upon?

12          A.    Yes.

13          Q.    One of the issues that you raised in your  
14   surrebuttal testimony was the time within which  
15   Ameren would be required to begin operation of a  
16   residential or mass market natural gas choice  
17   program, right?

18          A.    Do you have a reference that you could  
19   point me to?

20          Q.    Sure. Your surrebuttal testimony, page 7,  
21   line 138.

22          A.    That's correct.

1           Q.    Do you agree that if a workshop process  
2           contains discussions of reasonable contingencies for  
3           the timing of Ameren's required rollout of a mass  
4           market choice program, your concern would be  
5           adequately addressed?

6           A.    Could you repeat the question, please?

7           Q.    Would you agree that if the workshop  
8           process contains discussions of reasonable  
9           contingencies for the timing of Ameren's required  
10          rollout of a choice program, your concern would be  
11          adequately addressed?

12          A.    Yes.

13          Q.    Another of the issues that you raised in  
14          your surrebuttal testimony was the mechanics of the  
15          proposed price to compare, right?

16          A.    Yes.

17          Q.    Do you agree that if the workshop process  
18          covers the mechanics of the proposed price to  
19          compare, your concern would be adequately addressed?

20          A.    Yes, I would agree that that's one issue  
21          that would need to be discussed before an  
22          implementation would be made.

1           Q.   And that that issue could be addressed in  
2   the workshop process, right?

3           A.   Yes.

4           Q.   And again, another issue that you raised  
5   was the implementation of a purchase of receivables  
6   program, right?

7           A.   Yes.  There's several, many issues that  
8   would need to be identified.  I don't know that I've  
9   stated every single issue in my testimony, but there  
10   are many issues related to designing and implementing  
11   a residential gas choice program that would need to  
12   be discussed.  Many of those will be discussed in the  
13   report that the ORMD has been ordered to submit to  
14   the Commission.

15                   I guess one of the concerns we have  
16   with a workshop process is that it may be a redundant  
17   process to the ORMD that they are going to be issuing  
18   a report identifying some of these items that we have  
19   listed as concerns.  Those all should be addressed in  
20   that report too.  If we have workshops, it may be a  
21   redundant process.

22           MR. TOWNSEND:  I move to strike the answer as

1 nonresponsive.

2 MR. FITZHENRY: Can I have the question back,  
3 please, before I respond?

4 (The reporter read back the last  
5 question.)

6 MR. FITZHENRY: Well, if I could just add to  
7 that, in the context of the ORMD report, it's  
8 reasonable to expect that the POR/UCB issue would be  
9 addressed, and I think Ms. Seckler was addressing the  
10 concept of UCB/POR provisions as part of that process  
11 and was concerned about the redundancy that could  
12 take place.

13 MR. TOWNSEND: The question was  
14 straightforward: Was that one of the issues that you  
15 addressed in your testimony. And she went on to talk  
16 about what she thought might be in the ORMD report.  
17 It's not responsive to the question.

18 JUDGE ALBERS: I'll deny the motion to strike.

19 Q. BY MR. TOWNSEND: Ms. Seckler, would you  
20 turn to your surrebuttal testimony on page 4, lines  
21 72 to 80, please, and tell me when you're there.

22 A. Okay. I'm there.

1           Q.    There you refer to Section 19-130 of the  
2   Public Utilities Act and suggest that no decision on  
3   implementing residential choice should occur on  
4   Ameren's service territory until the Office of Retail  
5   Market Development, or ORMD, issues its report next  
6   July pursuant to Section 19-130, correct?

7           A.    Yes.

8           Q.    Section 19-130 was amended recently,  
9   correct?

10          A.    I believe so.

11          MR. TOWNSEND:   May I approach?

12          JUDGE ALBERS:   Yes.

13          MR. TOWNSEND:   I'll hand you what's being  
14   marked as RGS Cross Exhibit 4.

15                               (Whereupon RGS Cross Exhibit 4  
16                               was marked for identification as  
17                               of this date.)

18          Q.    Do you recognize that as being the text  
19   this is currently in Section 19-130 of the Public  
20   Utilities Act?

21          A.    Yes.

22          Q.    And actually, it has not yet become

1       effective, right?

2               A.    Yes.

3               Q.    The Eff at the bottom, Eff. 1-1-12,

4       indicates that that is not yet effective, is that

5       right?

6               A.    Yes.

7               Q.    Now that section refers to "barriers to the

8       development of competition," correct?

9               A.    Yes.

10              Q.    In fact, it refers twice to the barriers of

11       the development of competition, right?

12              A.    Yes.  No. 2 says identify them, and then in

13       the paragraph at the bottom, it says solutions to

14       overcome those barriers.  Is that what you're

15       referring to?

16              Q.    Actually, in No. 2, it says identify the

17       barriers, and in the final paragraph it discusses

18       assessment of the barriers, correct?

19              A.    Yes.

20              Q.    And in each instance, Section 19-130

21       specifically says that the report must provide,

22       "proposed solutions to overcome those barriers,"



1 right?

2 A. Yes.

3 Q. This doesn't specifically say anything with  
4 regards to purchase of receivables or utility  
5 consolidated billing, correct?

6 A. Correct.

7 Q. So you don't know whether or not those  
8 issues are going to be addressed within that report,  
9 do you?

10 MR. FITZHENRY: Objection. Calls for  
11 speculation.

12 MR. TOWNSEND: I'm asking her not to speculate  
13 this time. She already has done the speculating.

14 JUDGE ALBERS: Overruled.

15 THE WITNESS: I don't know what the final  
16 report would be, but I would assume that some  
17 interested party would raise that as an issue with  
18 retail choice.

19 Q. BY MR. TOWNSEND: Do you know what the  
20 process is going to be for the Office of Retail  
21 Market Development to develop that report?

22 A. I do not.

1           Q.    The General Assembly did not mention  
2   anything that would suggest in any way that the  
3   General Assembly intends to block or roll back the  
4   development of competition in Section 19-130, did it?

5           MR. FITZHENRY:  Your Honor, I generally don't  
6   have a problem with witnesses talking about their  
7   understanding of legislation and here Ms. Seckler  
8   does identify what her understanding is and briefly  
9   does so at lines 73 through 76.  I don't think she  
10   ought to be exercised to go through the entire law  
11   and try to determine what the General Assembly  
12   intended and what it didn't intend.

13                       Certainly Mr. Townsend is free to ask  
14   the questions relevant to her understanding as  
15   reflected on lines 73 through 76, but beyond that,  
16   it's really legal argument, legal interpretation.

17           MR. TOWNSEND:  I'm actually not asking her for  
18   her interpretation of this.  I'm just asking her what  
19   the General Assembly said and didn't say.

20                       The question is, did the General  
21   Assembly say anything within this text that made  
22   Ms. Seckler think that they wanted to stop the

1 progression of competition or block or roll back  
2 competition.

3 MR. FITZHENRY: Well, that's not the question I  
4 first heard, but even then, that question remains  
5 objectionable for the same reasons.

6 JUDGE ALBERS: All right. I think the statute  
7 pretty much speaks for itself. The objection is  
8 sustained.

9 MR. TOWNSEND: May I approach, Your Honor?

10 JUDGE ALBERS: Yes.

11 MR. TOWNSEND: I'll hand you what is being  
12 marked as RGS Cross Exhibit 5.

13 (Whereupon RGS Cross Exhibit 5  
14 was marked for identification as  
15 of this date.)

16 Q. Have you had a chance to review that?

17 A. Yes.

18 Q. Would you agree that the Illinois Commerce  
19 Commission has a policy in favor of competition?

20 A. I believe that that is true given that they  
21 seem to endorse choice for customers.

22 Q. Are you aware of any legislative act that

1 voids or alters Commission policy in favor of  
2 competition?

3 A. I am not aware of any.

4 Q. RGS witness Mr. Crist has set out a list of  
5 necessary components of customer choice program,  
6 correct?

7 A. Yes.

8 Q. And although the testimony may not have  
9 provided every detail for the proposed components,  
10 the testimony did set out a framework for RGS's  
11 proposed necessary components of customer choice,  
12 correct?

13 A. His testimony identified a framework in his  
14 opinion of what a framework would be, yes.

15 Q. And in rebuttal testimony, RGS provided  
16 more detail and a detailed explanation of a proposed  
17 enrollment process, correct?

18 A. Mr. Crist provided an example of an  
19 enrollment process, yes.

20 Q. And Mr. Crist also provided a detailed  
21 explanation of a proposed asset allocation procedure,  
22 correct?

1           A.    He did provide an example of an asset  
2 allocation method.

3           Q.    And you responded to Mr. Crist's rebuttal  
4 testimony, correct?

5           A.    Are you referring to my surrebuttal?

6           Q.    In your surrebuttal, you responded to his  
7 rebuttal testimony, correct?

8           A.    Correct.

9           Q.    And although you raised some concerns, some  
10 of which we've already discussed, would it be fair to  
11 say that Ameren has not offered an alternative  
12 proposal for the design of a mass market gas choice  
13 program?

14          A.    Ameren has not offered any analysis or  
15 studies because we haven't performed any analysis or  
16 studies other than the study for the \$2.7 million  
17 that was done in 2009 to change billing systems for  
18 an implementation of the gas choice program.

19                   Other than that, we have not performed  
20 any studies.

21          Q.    I'm sorry. I wasn't asking about studies.  
22 I was asking, has Ameren in this case presented an

1 alternative structure for the enrollment process, the  
2 asset allocation procedures, and the other components  
3 for a mass market natural gas choice program?

4 A. Ameren has not performed any studies to  
5 give you an alternative because we identified that  
6 those would be some of the items that would need to  
7 be discussed before implementation if we were ordered  
8 by the Commission to implement a program.

9 Q. And to your knowledge, no other parties  
10 submitted an alternative plan for the design of a  
11 mass market natural gas choice program, correct?

12 A. Correct.

13 Q. So if the Commission orders workshops to  
14 develop the details for a mass market choice program,  
15 would you agree then that a natural starting point  
16 for discussion would be the RGS proposals?

17 A. I would want to take those into  
18 consideration. I don't know if that would be what I  
19 would characterize as a starting point because I  
20 believe the enrollment process was one that was  
21 structured from another state's program. I don't  
22 know if those same characteristics would be the same

1     for our billing system. There may be some changes  
2     that we may have to make, but definitely those could  
3     be taken into consideration.

4           Q. Understanding that a workshop process is  
5     going to be a give and take, we have to start  
6     somewhere, right?

7           A. Yes.

8           Q. Would it be appropriate to use those  
9     proposals as a starting point?

10          A. That's one area, one place you could start.

11          Q. I'd like to talk to you for a minute about  
12     the current state of gas choice and Commission policy  
13     on customer choice.

14                   Turn to your surrebuttal testimony at  
15     page 5, lines 89 to 91 and let me know when you're  
16     there, please.

17          A. Okay.

18          Q. There you testified the implementation  
19     issues must be resolved and fundamental policy  
20     matters addressed by the Commission or the  
21     legislature prior to the development and the  
22     implementation of a gas retail choice program for

1     AIC's service areas, right?

2             A.    Yes.

3             Q.    Now, that's not literally true because

4     Ameren already has gas retail choice programs for its

5     nonresidential customers, right?

6             A.    That's correct.  We believe that there's a

7     lot of policy issues that should be identified before

8     implementation of a residential choice program for

9     Ameren Illinois.

10            Q.    So the issue here is whether Ameren should

11    implement a mass market natural gas choice program

12    and what those rules should be, right?

13            A.    That's correct.

14            Q.    Now, Ameren again wouldn't be the first

15    utility to undertake development of a mass market

16    natural gas choice program, would it?

17            A.    No.  I think we established that Northern

18    Illinois Utilities have those already.

19            Q.    And are you aware of the programs that

20    Nicor, Peoples, and North Shore have?

21            A.    I have general knowledge of their programs.

22            Q.    And all three of those programs were



1 approved by the Commission, right?

2 A. Yes.

3 Q. Would you agree that in order to determine  
4 what the Commission's policy is on a particular  
5 subject, it's appropriate to look at orders entered  
6 by the Commission and reports generated by the  
7 Commission?

8 A. Yes.

9 Q. In fact, that's how the Commission  
10 articulates its position on policy questions is  
11 through its orders and reports, right?

12 A. Yes.

13 Q. And to use your phrase, the Commission has  
14 previously addressed "fundamental policy matters"  
15 relating to mass market gas choice, right?

16 A. Yes.

17 MR. TOWNSEND: I'm going to hand you what's  
18 being marked as RGS Cross Exhibit 6.

19 (Whereupon RGS Cross Exhibit 6  
20 was marked for identification as  
21 of this date.)

22 Q. This is an excerpt from the Commission's

1 final order dated February 5, 2008 in ICC dockets  
2 07-0241 and 0242, North Shore and Peoples 2007 rate  
3 case.

4 I point your attention to the second  
5 sentence in the Commission conclusion: The  
6 Commission specifically opposed actions that would  
7 have an "incrementally adverse impact on supply  
8 competition" as being "inconsistent with our policy  
9 of expanding customer choice." Right?

10 MR. FITZHENRY: Your Honor, I'm going to object  
11 to the line of questioning. There's been no  
12 foundation laid that Ms. Seckler has any familiarity  
13 with this docket, whether she was a witness in this  
14 docket, whether she's read the order previously, and  
15 to simply ask her questions taken out of the order is  
16 inappropriate.

17 Now, when I did it, Mr. Sackett was a  
18 witness in the case where I asked him questions about  
19 the docket and his involvement, so it's different and  
20 why I'm making the objection here.

21 MR. TOWNSEND: In this instance, we have a  
22 witness who is responsible for state regulatory

1       affairs for Ameren.

2               MR. FITZHENRY:   She is not.

3               MR. TOWNSEND:   I'm sorry; for Rate Zone 1 and  
4       Rate Zone 2.   That's what we actually established at  
5       the beginning of cross-examination, and it's  
6       reflected in her direct testimony at lines 19 through  
7       21, and we've already been able to establish that the  
8       place that you should look for this piece of  
9       information that Ms. Seckler says is important, that  
10      is, what is the Commission's policy, she's recognized  
11      that the place you should look is in the orders and  
12      reports of the Illinois Commerce Commission.

13                       This is one of those orders that  
14      addresses mass market choice to determine what the  
15      Commission's policy is with regards to mass market  
16      choice.

17               MR. FITZHENRY:   And again, Judge, to quote you  
18      from an earlier ruling, the document speaks for  
19      itself.   It's pointless to just simply ask  
20      Ms. Seckler questions about language in an order that  
21      she's not familiar with.   She can only agree to the  
22      words as are written, but beyond that, she can't

1 really say anything more. I don't know what  
2 probative value we're going to have here by her just  
3 regurgitating words out of a Commission order.

4 MR. TOWNSEND: Well, although that question was  
5 just reading the order, I was just trying to lay a  
6 foundation, Your Honor, as to where on the document I  
7 was looking. I do intend to ask her a follow-up  
8 question about that.

9 JUDGE ALBERS: Okay.

10 MR. TOWNSEND: Although I have to admit, it's  
11 not a long line of cross-examination.

12 JUDGE ALBERS: Well, yeah, I agree with  
13 Mr. Fitzhenry that the order speaks for itself, and,  
14 you know, if it's a Commission order, the Commission  
15 can certainly reference that, but I'll go ahead and  
16 allow you the follow-up question just to see how  
17 you're going to try to tie this up or incorporate  
18 this.

19 Q. BY MR. TOWNSEND: Would you agree,  
20 Ms. Seckler, that in that order, the Commission was  
21 clear that it does have a policy of expanding  
22 customer choice?

1           A.    It says policy of expanding customer  
2   choice, so since it references that in that  
3   paragraph, I would assume that there is a policy that  
4   the Commission has.

5           Q.    Did you do any kind of investigation of  
6   Commission orders or reports to determine what the  
7   Commission's policy is with regards to customer  
8   choice?

9           A.    I reviewed the 2007 report on retail  
10   markets. I reviewed the 2009 testimony in the  
11   Peoples/North Shore rate case. I did not go back to  
12   the 2007 Peoples/North Shore rate case to review  
13   that.

14          Q.    And you saw that Mr. Crist cited a number  
15   of other sources with regards to Commission orders  
16   and reports.

17                   Did you go back and look at any of  
18   those?

19          A.    Do you have a specific reference to one?

20          Q.    How about the Nicor Gas order that  
21   initially established customer choice for Nicor Gas,  
22   the 2000 Docket 00-0620.

1           A.    I did not review that.

2           MR. FITZHENRY:   Judge, Ms. Seckler has been on  
3   the stand near an hour.   At some point, I'd like to  
4   offer her a break but I don't want to interrupt a  
5   particular --

6           MR. TOWNSEND:   Certainly feel free at this  
7   point if you'd like to take a break.

8           JUDGE ALBERS:   Are you at a breaking point?

9           MR. TOWNSEND:   Again, we're going to get into  
10   that report but there's no magic to getting into  
11   that.   Sure, we can take a break now.

12          MR. FITZHENRY:   Thank you, Mr. Townsend.

13          JUDGE ALBERS:   All right.   Recess for five  
14   minutes.

15                               (Recess taken.)

16          JUDGE ALBERS:   All right.   We'll pick it back  
17   up again.

18          MR. TOWNSEND:   May I approach, Your Honor?

19          JUDGE ALBERS:   Yes.

20          MR. TOWNSEND:   I'll hand you what's being  
21   marked as RGS Cross Exhibit 7 entitled "The Annual  
22   Report on the Development of Natural Gas Markets in

1 Illinois by the Illinois Commerce Commission in July  
2 of 2007."

3 (Whereupon RGS Cross Exhibit 7  
4 was marked for identification as  
5 of this date.)

6 Q. Is that the 2007 report to which you  
7 previously referred, Ms. Seckler?

8 A. Yes, it is.

9 Q. And would you agree that in that report,  
10 the Commission recognized that it is the Commission's  
11 policy that choice programs for small commercial and  
12 residential customers are an important component of  
13 the Illinois natural gas markets?

14 A. Yes.

15 Q. And would you agree that the ICC indicated  
16 that it's supportive of efforts to expand and improve  
17 choice programs?

18 A. Can you point me to a reference?

19 Q. On page 6.

20 A. Are you referring to --

21 Q. I'm sorry. Did you say that you referred  
22 to the 2005 report as well or just the 2007?

1           A.    No, 2007.

2           Q.    I'm sorry.  In the 2007 report, the  
3   Commission recognized that the small volume customer  
4   programs continued to mature and grow, correct?

5           A.    That's correct.

6           Q.    And that the interest in those programs  
7   remains strong.  Is that correct?  And that's at page  
8   3.

9           A.    There's a lot of sentences on this page.  
10   Do you have a specific place you can point me to?

11          Q.    At the bottom of page 3, on to page 4.

12          A.    Yes, it does talk about the number of small  
13   transportation customers in the program.

14          Q.    And that it continues to increase, correct?

15          A.    Yes.

16          Q.    Taking a step back to talk about  
17   competition in the market, the primary difference for  
18   a residential customer purchasing natural gas through  
19   an alternative retail gas supplier is that the  
20   customer pays a fee determined by the alternative  
21   retail gas supplier for the commodity of natural gas,  
22   correct?



1           A.    Yes.

2           Q.    And the customer pays that fee rather than  
3   paying the companies, the utilities, a purchased gas  
4   adjustment charge, right?

5           A.    Yes.

6           Q.    Now, you provided some testimony about the  
7   purchased gas adjustment, right?

8           A.    I don't recall if it was my testimony or  
9   data request.

10          Q.    In your rebuttal testimony at page 14, line  
11   250 through 254, if you want take a look there and  
12   let me know when you're there.

13          A.    Okay, yes.

14          Q.    Okay. And there you testified that as the  
15   Commission and its staff are aware, one of AIC's  
16   strategies is to maintain a stable PGA as he has a  
17   very robust price hedging program designed to dampen  
18   price volatility for its sales customers. This  
19   program is overseen by AIC's risk management group  
20   and has been in place since 2002. Is that correct?

21          A.    Yes.

22          Q.    Okay. Now, Ameren recovers its cost for

1 the AIC Risk Management Group, right?

2 A. Yes.

3 Q. How many people are in that group?

4 A. I don't know that.

5 Q. What risks do they manage?

6 A. They would manage all of the company's

7 risks versus one, for us, for gas supply, they look

8 at counterparty risk, ensure that we have contracts

9 established and executed between counterparties.

10 They look to the market, to our gas purchases, and

11 they monitor our risk management hedging program.

12 They obviously do other risk

13 management related services for other parts of the

14 company that I'm not as familiar with.

15 Q. Are all of the risks that they manage

16 related to supply?

17 A. Are you referring to the risk that I just

18 listed?

19 Q. Are all of the risks that the AIC Risk

20 Management Group manages related to supply?

21 A. No. They would manage other things like

22 interest rates and things that I'm not as familiar

1 with.

2 Q. So a portion of their time is devoted to  
3 managing supply risk?

4 A. If you consider the things I just listed as  
5 supply risk, yes.

6 Q. All of those things that you just listed  
7 related to supply, is that right?

8 A. They're all related to supply, yes.

9 Q. And are the costs associated with the AIC  
10 Risk Management Group recovered in the PGA?

11 A. No. No labor costs are recovered in the  
12 PGA.

13 Q. Would you agree that there are a number of  
14 ways in which a utility could procure natural gas for  
15 its PGA customers?

16 A. Could you be more specific on number of  
17 ways that you're referring to?

18 Q. Sure. That the utility could buy all of  
19 its gas on the spot market.

20 A. Sure.

21 Q. It could enter into first of month  
22 contracts?

1           A.    Yes.

2           Q.    It could enter into NAESB (North American  
3   Energy Standards Board) form contracts, right?

4           A.    Yes.

5           Q.    It could negotiate bilateral contracts,  
6   right?

7           A.    Yes.

8           Q.    And in order to procure natural gas for the  
9   PGA customers, the utility must develop a supply  
10   strategy, right?

11          A.    Yes.

12          Q.    And it takes time and resources to develop  
13   that strategy, right?

14          A.    Yes.

15          Q.    And then the utility must implement that  
16   supply strategy, right?

17          A.    Yes.

18          Q.    And implementing the strategy involves a  
19   number of different steps, right?

20          A.    Yes.

21          Q.    The utility must use an attorney to  
22   negotiate and enter into the agreements?

1           A.    I guess if they were not the standard NAESB  
2   agreement, but we typically have standard NAESB  
3   agreement which wouldn't need legal review for every  
4   one that's executed.

5           Q.    The utility has to accept the gas, right?

6           A.    Yes.

7           Q.    And someone has to account for each  
8   transaction, right?

9           A.    Yes.

10          Q.    And after the fact, someone has to perform  
11   a true-up of the actual versus the contracted  
12   amounts, right?

13          MR. FITZHENRY:   Only because I don't know how  
14   much longer this line of cross-examination is going  
15   to go, I'm going to object.

16                   In this portion of Ms. Seckler's  
17   testimony, all she tried to do was to say that, you  
18   know, she's challenging Mr. Crist's contention that  
19   AIC doesn't provide certain services or products.

20                   Everything that Mr. Townsend is asking  
21   of her right now is really immaterial to the issues  
22   in dispute between the parties, not that they're even

1     disputed but the positions that the parties are  
2     taking.    So what?

3           MR. TOWNSEND:   Well, in part, this goes to the  
4     question of price to compare and should you just be  
5     looking at the PGA cost, which is the cost of the  
6     actual molecules of the gas, or are there other  
7     things that go into arranging for supply, and so I  
8     think this is the witness that would know about those  
9     additional costs.

10                    Again, I'm not going deep into this  
11     area but I'm just trying to establish that there are  
12     a lot of personnel costs here for a lot of different  
13     things that are not recovered within the PGA, and so  
14     at the end of the day, I'm going to ask whether or  
15     not, or might not ask but whether or not these  
16     components should be put into the price to compare.

17                    It's establishing an important element  
18     of what it is that Ms. Seckler recognizes as an  
19     important component of a mass market choice program.

20           MR. FITZHENRY:   Well, it's clear from  
21     Ms. Seckler's testimony that she's not advocating a  
22     particular program design.    She's suggesting that,

1 one, either that take place in the context of the  
2 workshops that RGS is supporting or, two, as part of  
3 the ORMD report process.

4 We're not here to talk about the  
5 specifics of a program design or how to conduct a  
6 cost benefit analysis or how to be sure that we have  
7 a price to compare program that works for RGS  
8 customers. That's not what this testimony is about,  
9 and these issues aren't here for the Commission to  
10 decide in this docket.

11 JUDGE ALBERS: I think we're getting a little  
12 toot far from the topic at hand here in this delivery  
13 services rate case so I'm going to sustain the  
14 objection.

15 MR. TOWNSEND: Are the employment costs  
16 associated with all of those employees included in  
17 the delivery services rates?

18 MR. FITZHENRY: Same objection, Your Honor.

19 JUDGE ALBERS: Sustained.

20 Q. BY MR. TOWNSEND: Does the PGA just recover  
21 the costs associated with the molecules associated  
22 with the gas that's delivered to --

1           MR. FITZHENRY:  Objection.  Same objection.

2       We're not here to talk about how RGS can construct a

3       retail gas choice program that's better than what the

4       utilities offer.

5           MR. TOWNSEND:  I'm not asking that.

6           JUDGE ALBERS:  I think some of what this line

7       of questioning is getting at may be better suited for

8       a workshop process if the Commission decided to go

9       that route, so I think we need to rein in this area

10      here.  Move on with your line of questioning.

11          Q.    BY MR. TOWNSEND:  Okay.  I want to talk to

12      you a bit about the variety of products that are

13      available to customers.

14                    If Ameren decided tomorrow to offer a

15      fixed rate product where the rate stays the same for

16      the entire year, could Ameren do that?

17          MR. FITZHENRY:  Objection, and it's the same

18      objection I just raised with you previously, Your

19      Honor.  We're not here to talk about various program

20      designs regarding how we provide gas service to our

21      customers.

22                    Ms. Seckler's testimony is simply



1     this.  There are some issues that have to be  
2     addressed.  They could be addressed in workshops.  
3     They might be addressed in the ORMD, and we want to  
4     be sure that customers are interested in the program,  
5     and we want to be sure there are benefits to those  
6     customers.

7                     Those are sort of high level points  
8     that she's making in her testimony, and that's all  
9     we're here to talk about.

10            MR. TOWNSEND:  Well, actually, one of the  
11     questions is are there benefits associated with  
12     customer choice, and one of the things that we've  
13     identified is benefit to customer choice.

14            MR. FITZHENRY:  That's not to be resolved in  
15     this docket.

16            MR. TOWNSEND:  Well, actually, it is.  That is  
17     the threshold question:  Should residential customers  
18     continue to be denied the ability to have choice.  
19     That's the question, and again, the implementation  
20     then is another question, but that is the threshold  
21     question, and that is an issue that has to be  
22     addressed.

1           MR. FITZHENRY: No, that's not correct.

2                       Ms. Seckler's position is clear, as is  
3 the company's. The companies do not oppose retail  
4 gas choice.

5                       Now, how that comes about is left for  
6 the Commission to decide, but to decide the benefits  
7 and the cost and what cost ends up here, that's not  
8 what this docket is about.

9           JUDGE ALBERS: I think what this docket is  
10 about on this issue is more high level general  
11 questions about should the Commission, at least a  
12 threshold question as I see it, should the Commission  
13 be requiring or directing workshops be held for the  
14 purpose of establishing retail customer choice for  
15 residential customers, and I sense that some of the  
16 questions you're getting into are the nuts and bolts  
17 of how to implement that, and I don't think we're  
18 going to be able to do that through this docket in  
19 terms of the specifics of what's best or worst for  
20 customers if such a -- I don't think we have the  
21 means to do that in this proceeding.

22           MR. TOWNSEND: And, Your Honor, RGS is not

1     requesting for it to be fully implemented within this  
2     proceeding as you know. We have agreed that we  
3     should go to a workshop process.

4                     What we've done, both through the  
5     rebuttal testimony and through some of this  
6     cross-examination, is help advance some of those  
7     issues for that workshop process, and again, you  
8     know, the whole question of the benefits of choice  
9     has been raised, you know, what are those benefits,  
10    and this line of questioning was just going to point  
11    out the fact that there is a difference in the way  
12    that Ameren can go about offering a different rate  
13    versus what a competitive supplier can go about  
14    offering those different rates, and if Ameren wanted  
15    to do these things, it would take a lot of time and  
16    they would have to go through a lot of processes.

17                    That's all I was trying to establish  
18    with this.

19                    JUDGE ALBERS: Well, I think Mr. Crist provided  
20    some of that in his testimony.

21                    MR. TOWNSEND: Okay.

22                    Q. Can we turn in your surrebuttal testimony

1 to page 5, line 99 through page 6, line 112, and let  
2 me know when you're there.

3 A. I'm there.

4 Q. And there you note that Mr. Thomas has  
5 presented testimony in this case, CUB witness  
6 Christopher Thomas, correct?

7 A. Yes.

8 Q. You note that Mr. Thomas relies upon the  
9 CUB gas market monitor for his position that gas  
10 choice has not provided benefits to customers in the  
11 Peoples, North Shore, and Nicor service territories,  
12 right?

13 A. Yes.

14 Q. Now, your testimony on that point is  
15 careful and it's candid. In particular, you state  
16 that you have not evaluated Mr. Thomas's claims for  
17 accuracy regarding the CUB market monitor, right?

18 A. Yes.

19 Q. And no one else at Ameren has evaluated the  
20 accuracy of the CUB gas market monitor, right?

21 A. That's correct.

22 Q. So you have no way of knowing whether the

1 CUB gas market monitor is accurate or inaccurate,  
2 correct?

3 A. That's correct. I stated I haven't  
4 evaluated it to determine that.

5 Q. And if it were demonstrated that the CUB  
6 gas market monitor were inaccurate, Ameren certainly  
7 would not recommend that the Commission rely on the  
8 CUB gas market monitor to evaluate the benefits of  
9 gas choice, right?

10 A. The Commission can rely on whatever  
11 information it has. I'm assuming that they wouldn't  
12 rely on inaccurate information.

13 Q. And they shouldn't rely on inaccurate  
14 information, right?

15 A. Right.

16 MR. TOWNSEND: Thank you.

17 Your Honor, no further cross.

18 JUDGE ALBERS: Do you have any redirect?

19 MR. FITZHENRY: We do not, Your Honor. Thank  
20 you.

21 JUDGE ALBERS: Did you want to move for the  
22 admission of cross exhibits?

1           MR. TOWNSEND:  If I can have just one moment,  
2   Your Honor.

3           JUDGE ALBERS:  Sure.

4                               (Pause)

5           MR. TOWNSEND:  Your Honor, we would move for  
6   the admission of RGS Cross Exhibits 2, 3 and 5.  
7   Those are the data request responses respectively to  
8   RGS Data Requests 2.01, 5.01 and 5.05.

9           MR. FITZHENRY:  No objection.

10          JUDGE ALBERS:  All right.  Hearing no  
11   objection, then RGS Cross Exhibits 2, 3 and 5 are  
12   admitted.

13                               (Whereupon RGS Cross Exhibits 2,  
14                               3 and 5 were admitted into  
15                               evidence at this time.)

16          MR. TOWNSEND:  Thank you, Your Honor.

17          JUDGE ALBERS:  I'm assuming that Judge Yoder  
18   did not admit Ms. Seckler's testimony itself yet so  
19   any objection to that?

20          MR. TOWNSEND:  That's correct.

21          JUDGE ALBERS:  Hearing no objection, then AIC  
22   Exhibits 15.0G (Confidential and Public Versions),

1     15.1G (Confidential and Public Versions), 15.2G,  
2     15.3G, 15.4G Second Revised, 15.5G, 35.0 Revised,  
3     35.1, 35.2 and 52.0 Revised are all admitted.

4                     (Whereupon AIC Exhibits 15.0 G  
5                     (Confidential and Public  
6                     Versions), 15.1G (Confidential  
7                     and Public Versions), 15.2G,  
8                     15.3G, 15.4G Second Revised,  
9                     15.5G, 35.0 Revised, 35.1, 35.2  
10                    and 52.0 Revised were admitted  
11                    into evidence at this time.)

12           MR. TOWNSEND: Your Honor, it might be helpful  
13   if we could have five minutes just before resuming.

14           JUDGE ALBERS: Yeah, we can recess for a few  
15   minutes. Go ahead.

16                     (Recess taken.)

17           JUDGE ALBERS: On the record.

18                     Our next witness is David Rearden, and  
19   I see that he has already taken the stand so I will  
20   go ahead and swear him in.

21                     (Whereupon the witness was sworn  
22                     by Judge Albers.)

1 JUDGE ALBERS: Thank you, sir.

2 All right. Ms. Von Qualen?

3 MS. VON QUALEN: Good afternoon, Dr. Rearden.

4 DR. REARDEN: Hello.

5 DAVID REARDEN

6 called as a witness herein, on behalf of staff of the

7 Illinois Commerce Commission, having been first duly

8 sworn on his oath, was examined and testified as

9 follows:

10 DIRECT EXAMINATION

11 BY MS. VON QUALEN:

12 Q. Please state your name and spell your last

13 name.

14 A. David Rearden (R-e-a-r-d-e-n).

15 Q. Who is your employer and what is your

16 business address?

17 A. Illinois Commerce Commission, 527 East

18 Capitol Avenue, Springfield, Illinois.

19 Q. What is your position at the Commission?

20 A. Senior economist.

21 Q. Dr. Rearden, did you prepare testimony to

22 be submitted in this docket?



1           A.    Yes.

2           Q.    Do you have before you a document that's

3    been titled ICC Staff Exhibit 34.0, Rebuttal

4    Testimony of David Rearden?

5           A.    Yes.

6           Q.    Did you prepare that testimony to be

7    submitted in this proceeding?

8           A.    Yes.

9           Q.    Do you have any additions or corrections to

10   ICC Staff Exhibit 34.0?

11          A.    No.

12          Q.    Is the information contained in Staff

13   Exhibit 34.0 true and correct to the best of your

14   knowledge?

15          A.    Yes.

16          Q.    If I were to ask you the same questions

17   today, would your answers be the same?

18          A.    Yes.

19          MS. VON QUALEN:  I move for admission into

20   evidence ICC Staff Exhibit 34.0, Rebuttal Testimony

21   of David Rearden.

22          JUDGE ALBERS:  Any objections at this time?

1                   Hearing none, we'll go ahead and  
2     proceed with the cross for now.

3                   Who would like to go first?

4           MR. STURTEVANT:   Go ahead.

5           MR. TOWNSEND:   Thank you, Your Honor.

6                   Chris Townsend appearing on behalf of  
7     the Retail Gas Suppliers consisting of Interstate Gas  
8     Supply of Illinois, Inc. and Dominion Retail, Inc.

9                   Good afternoon, Dr. Rearden.

10          THE WITNESS:   Good afternoon.

11                               CROSS-EXAMINATION

12   BY MR. TOWNSEND:

13           Q.    You're a senior economist on the staff of  
14     the Illinois Commerce Commission, is that right?

15           A.    That's correct.

16           Q.    In the policy program, correct?

17           A.    Yes.

18           Q.    And you filed rebuttal testimony only in  
19     this proceeding, right?

20           A.    Yes.

21           Q.    And in your rebuttal testimony, you respond  
22     to the RGS proposal for the Commission to order

1 Ameren to implement a mass market natural gas choice  
2 program, right?

3 A. Yes.

4 Q. Now, Ameren allows its nonresidential  
5 customers to choose their natural gas supplier,  
6 right?

7 A. Yes.

8 Q. Ameren also allows its electric customers  
9 of all sizes to choose their suppliers, right?

10 A. That's my understanding.

11 Q. And although Ameren does not currently have  
12 a mass market gas choice program, its Ameren's  
13 position in this case that it does not outright  
14 oppose establishing a mass market gas choice program,  
15 correct?

16 A. That's my understanding.

17 Q. And Ameren would not resist a Commission  
18 direction to implement a mass market choice program,  
19 right?

20 A. I believe that's their testimony.

21 Q. And Ameren would be willing, for example,  
22 to engage in a Commission-ordered workshop process to

1     formulate the details of a mass market choice  
2     program, right?

3             A.    I believe that's their testimony.

4             Q.    I want to talk to you first about your  
5     recommendation to the Commission.

6                     In your rebuttal testimony, you  
7     recommend that the Commission not order AIC to  
8     institute a small volume choice program at this time,  
9     right?

10            A.    That's correct.

11            Q.    And one of the bases for your opinion was  
12    that RGS did not offer any empirical support that  
13    customers are better off with a choice program,  
14    right?

15            A.    Yes.

16            Q.    Another basis for your opinion was that RGS  
17    proposal lacked details necessary to implement the  
18    program, right?

19            A.    The details weren't there to impose a  
20    tariff.

21            Q.    Would you agree that the details are there  
22    to begin a discussion in a workshop?

1           A.    You don't need any details to begin a  
2 workshop.

3           Q.    The third basis for your opinion was that  
4 the Commission should wait until the Office of Retail  
5 Market Development or ORMD completes its report under  
6 Section 19-130 of the Public Utilities Act, right?

7           A.    That's correct.

8           Q.    I'd like to take those one at a time.

9                       First I want to talk about your  
10 position that RGS did not offer any empirical support  
11 for residential customers being better off with a  
12 choice program.

13                      Now, you don't deny that there is  
14 empirical support for choice programs, right? It was  
15 just a criticism that the testimony did not contain  
16 that empirical data.

17           MS. VON QUALEN:  Mr. Townsend, are you asking  
18 as to what he testified to or as to what he thinks?

19           MR. TOWNSEND:  As to what he testified to.

20           MS. VON QUALEN:  Thank you.

21           THE WITNESS:  Well, my testimony is that there  
22 isn't evidence in the record that customers are

1 better off under a choice program.

2 Q. BY MR. TOWNSEND: Okay. Now, the Illinois  
3 Commerce Commission has not established a policy  
4 saying that it's necessary to present empirical  
5 evidence before initiating a choice program, has it?

6 A. Typically, the choice programs that have  
7 been started in Illinois have been at the instigation  
8 of the utility.

9 Q. And in initiating the choice program, the  
10 Commission hasn't required any empirical support for  
11 customers being able to save money underneath those  
12 programs, right?

13 A. No. When the programs were started, there  
14 wasn't any empirical data at all. Since then, we've  
15 had ten years of experience in Illinois.

16 Q. And since then, the programs have continued  
17 to expand, correct?

18 A. They have, uh... I may need to ask my  
19 attorney something on the side.

20 As far as I know, the number of  
21 customers is staying pretty high. Let me put it that  
22 way. That has not gone down a lot.

1           Q.   And in terms of the Commission's policy,  
2   would you agree that the Commission continues to have  
3   a policy to expand competition?

4           A.   I think generally they seem to -- the  
5   Commission has generally supported choice programs  
6   when they have been proposed by the utility.

7           Q.   In your testimony, you do note that there  
8   are benefits of competition.  For example, you noted  
9   in your rebuttal testimony that ARGS can offer a  
10  great variety of pricing plans to consumers, right?

11          A.   That's one of the, yes, that's one of the  
12  things that ARGS can do.

13          Q.   And you identify fixed price plans noting  
14  that they give customers price certainty, right?

15          A.   That's correct.

16          Q.   And Mr. Crist yesterday -- did you hear his  
17  testimony yesterday?

18          A.   Yes.

19          Q.   He likewise indicated that there are plans  
20  that give price certainty like fixed bill plans,  
21  right?

22          A.   I understand that, yes.

1           Q.   And you testified that certainly, success  
2   in the marketplace is some evidence that ARGs are  
3   offering services that meet their customers' needs,  
4   right?

5           A.   I believe I said success in the marketplace  
6   is some evidence that ARGs are offering services that  
7   meets their customer needs.

8           Q.   Now, Ameren would not be the first utility  
9   to undertake a residential or mass market gas choice  
10  program, right?

11          A.   No.

12          Q.   You're aware of mass market choice programs  
13  for each of the other large utilities, Peoples, North  
14  Shore and Nicor, right?

15          A.   That's correct.

16          Q.   And all these of those residential natural  
17  gas programs were approved by the Commission?

18          A.   Yes.  They're embodied in tariffs, and the  
19  Commission approves tariffs.

20          Q.   In response to a data request we served,  
21  you indicated that you did not rely upon prior  
22  Commission orders for your recommendation.  Is that



1 right?

2 A. That's correct.

3 Q. But you are aware the Commission repeatedly  
4 has endorsed a policy of expanding customer choice,  
5 right?

6 A. Well, the Commission has typically approved  
7 small volume transportation programs proposed by the  
8 utility, and certainly the Commission is free to do  
9 that here.

10 What I'm advising is that the  
11 Commission wait until the report of the legislature  
12 is concluded because that report is there to look at  
13 what's happening in retail natural gas markets.

14 Q. Okay. And that was your third reason for  
15 suggesting that the Commission not implement the  
16 program in this proceeding, because there's this ORMD  
17 report that's coming up, right?

18 A. Yes.

19 Q. Do you understand Section 19-130 to prevent  
20 the Commission from ordering Ameren to design and  
21 implement a mass market natural gas choice program?

22 A. No. I'm just recommending the Commission

1 wait for that report.

2 MR. TOWNSEND: May I approach, Your Honor?

3 JUDGE ALBERS: Yes.

4 MR. TOWNSEND: I'll hand you what's being  
5 marked as RGS Cross Exhibit 8.

6 (Whereupon RGS Cross Exhibit 8  
7 was marked for identification as  
8 of this date.)

9 Q. And this is your response to RGS Data  
10 Request 1.08, right?

11 A. That is correct.

12 Q. Would it be fair to say that 1.08 asks for  
13 a number of specific details with regards to the  
14 process that the Office of Retail Market Development  
15 is going to undertake for putting together its  
16 report?

17 A. Yes.

18 Q. And you do not know what the Office of  
19 Retail Market Development's schedule is for  
20 developing that report, right?

21 A. Except that the Commission needs to deliver  
22 that report by July of 2013 I believe.

1 Q. You don't know who or what parties --

2 A. I'm sorry. I may have gotten the date

3 wrong, but there is a deadline for the report.

4 Q. I think it's July 1st of each year. Does

5 that sound right?

6 A. Filed July 1st of each odd year.

7 Q. There is an annual report actually that is

8 approved, that is to be approved under 19-130, right?

9 Would it help if I gave you a copy of

10 Section 19-130?

11 A. Yes, it does say annual, but it also says

12 the report shall be approved by the Commission and be

13 filed by July 1 of each odd year.

14 Q. Do you think that the ORMD report is going

15 to be prepared in 2012 or 2013?

16 A. I don't know. I had read that as, odd year

17 I meant as like 2011, 2013.

18 Q. So you were recommending that the

19 Commission not act at all until after July 1st of

20 2013?

21 A. Yes.

22 Q. Even though it may have an annual report in

1 July of this year?

2 A. Well, it says what it says. I mean, it  
3 says two things it looks like.

4 Q. If the Commission has a report by July 1st  
5 of this year, do you think that that would satisfy  
6 your concerns?

7 A. You mean of next year?

8 Q. I'm sorry; for 2012.

9 A. I don't know.

10 Q. You don't know whether or not the Office of  
11 Retail Market Development is even going to solicit  
12 comments before issuing its report, do you?

13 A. Well, the law says that the Office of  
14 Retail Market Development shall gather input from all  
15 interested parties as well as from other bureaus  
16 within the Commission.

17 So I don't know if that means they'll  
18 solicit comments or it will be a workshop. I don't  
19 know.

20 Q. And you don't know what information the  
21 Office of Retail Market Development is going to  
22 generate or rely upon, do you?

1           A.    No.

2           Q.    You don't even know whether staff is going  
3   to file comments with the Office of Retail Market  
4   Development?

5           A.    I don't know how the process will work.

6           MR. TOWNSEND:   No further questions.

7           JUDGE ALBERS:   All right.   Thank you.

8           MR. TOWNSEND:   I move for the admission of RGS  
9   Cross Exhibit 8 which was the staff response to RGS  
10   Data Request 1.08.

11          JUDGE ALBERS:   Any objection to No. 8?

12          MS. VON QUALEN:   No.

13          JUDGE ALBERS:   Okay.   Hearing no objection, RGS  
14   Cross Exhibit 8 is admitted.

15                               (Whereupon RGS Cross Exhibit 8  
16                               was admitted into evidence at  
17                               this time.)

18          JUDGE ALBERS:   And then Mr. Sturtevant?

19          MR. STURTEVANT:   Yes, Your Honor.   We do not  
20   have any questions for this witness.

21          JUDGE ALBERS:   Oh, okay.   All right.

22                               Do you have any redirect?

1 MS. VON QUALEN: Could we have just one minute?

2 JUDGE ALBERS: Yes.

3 (Pause)

4 JUDGE ALBERS: Back on the record.

5 Is there any redirect for Dr. Rearden?

6 MS. VON QUALEN: No, staff has no redirect.

7 JUDGE ALBERS: All right. Thank you.

8 With that, is there any objection then

9 to Staff Exhibit 34?

10 Hearing none, then Staff Exhibit 34 is

11 admitted.

12 (Whereupon Staff Exhibit 34 was

13 admitted into evidence at this

14 time.)

15 JUDGE ALBERS: Thank you, Dr. Rearden.

16 (Witness excused.)

17 JUDGE ALBERS: I think before we turn our

18 attention to any additional affidavits for today,

19 Ms. Hicks, you have an affidavit for us today.

20 MS. HICKS: Yes, Your Honor. I have a quick

21 update for you on the motion earlier today and your

22 ruling. CUB has now served RGS and the rest of the

1 parties with all of their responses responsive to  
2 your ruling of this afternoon.

3 JUDGE ALBERS: Okay. Thank you.

4 Then I guess with regard to whether or  
5 not Mr. Thomas will be called back, I'll give  
6 Mr. Townsend and Mr. Skey a chance to look over those  
7 responses and let us know tomorrow if you think  
8 you'll need additional time. We'll take that into  
9 consideration in determining whether or not we'll  
10 call back Mr. Thomas.

11 MS. HICKS: Thank you.

12 JUDGE ALBERS: I will note we have one more  
13 witness, Mr. Effron, on the witness list, but I've  
14 been told there are no questions for Mr. Effron but  
15 there is an affidavit available.

16 Mr. Borovik?

17 MR. BOROVIK: Unless you wanted the company to  
18 go first with theirs, I'm ready to go.

19 JUDGE ALBERS: Go ahead. It doesn't matter to  
20 me.

21 MR. BOROVIK: Thank you, Your Honor.

22 At this time, AG/CUB would like to

1 enter into evidence certain testimony of David  
2 Effron.

3 The direct testimony of David Effron  
4 (redacted and unredacted versions) as well as  
5 Schedule DJE 1 through DJE 3 respectively marked as  
6 AG/CUB Exhibit 1.0 and AG/CUB Exhibit 1.1 were filed  
7 on e-Docket June 29, 2011.

8 Also, the rebuttal testimony of David  
9 J. Effron and corresponding Schedules DJE 1 through  
10 DJE 4 and WP DJE respectively identified as AG/CUB  
11 Exhibit 4.0 and AG/CUB Exhibit 4.1 were filed on  
12 e-Docket August 23, 2011.

13 As well, the affidavit of David J.  
14 Effron identified as AG/CUB Exhibit 4.2 was filed on  
15 e-Docket September 12, 2011.

16 At this time, AG/CUB would like to  
17 move into the evidence AG/CUB Exhibit 1.0,  
18 Exhibit 1.1, Exhibit 4.0, Exhibit 4.1, and  
19 Exhibit 4.2.

20 JUDGE ALBERS: Any objection?

21 Hearing none, then AG/CUB Exhibit 1.0,  
22 confidential and public versions both, 1.1, 4.0, 4.1



1     and 7.0 are admitted.

2             MR. BOROVIK:   Your Honor, I'm sorry.   I believe  
3     the affidavit is marked as 4.2.   I had it marked  
4     wrong on the exhibit list.   It should have been 4.2.

5             JUDGE ALBERS:   All right.   Thank you with that  
6     correction then, 4.2 is admitted.

7             MR. BOROVIK:   Thank you, Your Honor.

8                             (Whereupon AG/CUB Exhibit 1.0,  
9                             Exhibit 1.1, Exhibit 4.0,  
10                            Exhibit 4.1, and Exhibit 4.2  
11                            were admitted into evidence at  
12                            this time.)

13            JUDGE ALBERS:   Off the record.

14                            (Whereupon an off-the-record  
15                            discussion transpired at this  
16                            time.)

17            JUDGE ALBERS:   All right.   Mr. Sturtevant or  
18     Ms. Segal, whichever one.

19            MR. STURTEVANT:   Sure, Your Honor, if you're  
20     ready.

21            JUDGE ALBERS:   I think I am.

22            MR. STURTEVANT:   Your Honor, we have a number

1 of testimony of Ameren Illinois Company witnesses  
2 which are supported by affidavit. I'll start with  
3 the testimony of Ameren witness or Ameren Illinois  
4 witness Randall K. Lynn.

5 Mr. Lynn sponsored direct testimony  
6 identified as Ameren Exhibits 8.0E and 8.0G with  
7 accompanying exhibit, Ameren Exhibit 8.1. That's his  
8 direct testimony, and his direct testimony is  
9 supported by his affidavit which is marked as Ameren  
10 Exhibit 8.2, and we would move for the admission of  
11 Mr. Lynn's direct testimony at this time.

12 JUDGE ALBERS: Any objection?

13 Hearing none, then Ameren  
14 Exhibits 8.0E, 8.0G, 8.1 and 8.2 are admitted.

15 (Whereupon Ameren Exhibits 8.0E,  
16 8.0G, 8.1 and 8.2 were admitted  
17 into evidence at this time.)

18 JUDGE ALBERS: Next?

19 MR. STURTEVANT: And I would just note, Your  
20 Honor, that all of these have been filed on e-Docket  
21 this afternoon.

22 JUDGE ALBERS: Right.

1           MR. STURTEVANT: Next is the testimony of  
2   Ameren Illinois witness Brenda J. Menke (M-e-n-k-e).  
3   Ms. Menke sponsors direct testimony identified as  
4   Ameren Exhibits 10.0E Revised and 10.0G Revised.

5                   She also sponsors supplemental direct  
6   testimony identified as Ameren Exhibit 17.0.

7                   Her testimony is supported by her  
8   affidavit which is marked as Ameren Exhibit 17.1.

9                   We would move for admission of the  
10   testimony of Ms. Menke at this time.

11           JUDGE ALBERS: 17.1 was the affidavit?

12           MR. STURTEVANT: Correct.

13           JUDGE ALBERS: Okay. Any objection?

14                   Hearing none, then Ameren  
15   Exhibits 10.0E Revised, 10.0G Revised, 17.0 and 17.1  
16   are admitted.

17                               (Whereupon Ameren Exhibits 10.0E  
18                               Revised, 10.0G Revised, 17.0 and  
19                               17.1 Exhibits were admitted into  
20                               evidence at this time.)

21           JUDGE ALBERS: Okay.

22           MR. STURTEVANT: Next, Your Honor, we have the

1 testimony of Ameren Illinois witness Gary M. Rygh  
2 (R-y-g-h).

3 Mr. Rygh sponsors rebuttal testimony  
4 identified as Ameren Exhibit 36.0 with supporting  
5 exhibit Ameren Exhibit 36.1.

6 Mr. Rygh's rebuttal testimony is  
7 supported by his affidavit which is marked as Ameren  
8 Exhibit 36.2.

9 We would move for the admission of the  
10 testimony of Mr. Rygh at this time.

11 JUDGE ALBERS: Any objection?

12 Hearing none, Ameren Exhibits 36.0,  
13 36.1 and 36.2 are admitted.

14 (Whereupon Ameren Exhibits 36.0,  
15 36.1 and 36.2 were admitted into  
16 evidence at this time.)

17 JUDGE ALBERS: All right.

18 MR. STURTEVANT: Next, Your Honor, we have the  
19 testimony of Ameren Illinois witness David A. Heintz  
20 (H-e-i-n-t-z).

21 Mr. Heintz sponsors direct testimony  
22 identified as Ameren Exhibit 5.0E and 5.0G along with

1 supporting exhibits identified as Ameren Exhibits 5.1  
2 through 5.18.

3 Mr. Heintz also sponsors rebuttal  
4 testimony identified as Ameren Exhibit 25.0;  
5 supporting exhibit, Ameren Exhibit 25.1.

6 Further, Mr. Heintz sponsors  
7 surrebuttal testimony identified as Ameren  
8 Exhibit 43.0. Mr. Heintz's testimony is supported by  
9 his affidavit which is marked as Ameren Exhibit 43.1.

10 We would move for the admission of  
11 testimony of Mr. Heintz at this time.

12 JUDGE ALBERS: Any objection?

13 Hearing none, AIC Exhibits 5.0E, 5.0G,  
14 5.1 through 5.18, 25.0, 25.1, 43.0 and 43.1 are  
15 admitted.

16 (Whereupon AIC Exhibits 5.0E,  
17 5.0G, 5.1 through 5.18, 25.0,  
18 25.1, 43.0 & 43.1 were admitted  
19 into evidence at this time.)

20 MR. STURTEVANT: Next, Your Honor, we have the  
21 testimony of Ameren Illinois witness Christa G. Bauer  
22 (B-a-u-e-r).

1                   Ms. Bauer sponsors direct testimony  
2   which is identified as Ameren Exhibits 7.0E and 7.0G.

3                   In addition, her direct testimony is  
4   supported by Ameren Exhibit 7.1, which is designated  
5   as confidential and proprietary, as well as Ameren  
6   Exhibit 7.2 Revised and 7.3 Revised.

7                   Ms. Bauer has supplemental direct  
8   testimony identified as Ameren Exhibit 20.0.

9                   Ms. Bauer also has rebuttal testimony  
10   identified as Ameren Exhibit 27.0.

11                  And finally, Ms. Bauer has surrebuttal  
12   testimony identified as Ameren Exhibit 45.0.

13                  Ms. Bauer's testimony is supported by  
14   her affidavit which is marked as Ameren Exhibit 45.1.

15                  Ameren would move for the admission of  
16   Ms. Bauer's testimony at this time.

17                  JUDGE ALBERS: Any objections?

18                  Hearing none, Ameren Exhibits 7.0E,  
19   7.0G, 7.1 (Confidential and Public Versions), 7.2  
20   Revised, 7.3 Revised, 20.0, 27.0, 45.0 and 45.1 are  
21   admitted.

22

1 (Whereupon Ameren Exhibits 7.0E,  
2 7.0G, 7.1 (Confidential & Public  
3 Versions), 7.2 Revised, 7.3  
4 Revised, 20.0, 27.0, 45.0 & 45.1  
5 were admitted into evidence at  
6 this time.)

7 JUDGE ALBERS: Okay.

8 MR. STURTEVANT: Then, Your Honor, we have the  
9 testimony of Ameren Illinois witness Michael J. Getz  
10 (G-e-t-z).

11 Mr. Getz sponsors direct testimony  
12 identified as Ameren Exhibit 9.0E and Ameren  
13 Exhibit 9.0G. His direct testimony is supported by  
14 Ameren Exhibits 9.1 and 9.2.

15 Mr. Getz sponsors supplemental direct  
16 testimony identified as Ameren Exhibit 18.0 with  
17 supporting exhibit Ameren Exhibit 18.1.

18 Mr. Getz sponsors rebuttal testimony  
19 identified as Ameren Exhibit 29.0 with supporting  
20 exhibits identified as Ameren Exhibits 29.1 through  
21 29.6.

22 Mr. Getz also sponsors surrebuttal

1 testimony identified as Ameren Exhibit 46.0 with  
2 supporting exhibits identified as Ameren  
3 Exhibits 46.1 through 46.5.

4 Mr. Getz's testimony is supported by  
5 his affidavit which is marked as Ameren Exhibit 46.6.

6 We would move for the admission of  
7 Mr. Getz's testimony at this time.

8 JUDGE ALBERS: Any objection?

9 Hearing none, Ameren Exhibits 9.0E,  
10 9.0G, 9.1, 9.2, 18.0, 18.1, 29.0, 29.1 through 29.6,  
11 46.0 and 46.1 through 46.6 are admitted.

12 (Whereupon Ameren Exhibits 9.0E,  
13 9.0G, 9.1, 9.2, 18.0, 18.1,  
14 29.0, 29.1 through 29.6, 46.0  
15 and 46.1 through 46.6 were  
16 admitted into evidence at this  
17 time.)

18 JUDGE ALBERS: All right.

19 MR. STURTEVANT: Next we have the testimony of  
20 James M. Mazurek (M-a-z-u-r-e-k).

21 Mr. Mazurek sponsors direct testimony  
22 identified as Ameren Exhibits 12.0E and 12.0G with



1     one supporting exhibit identified as Ameren  
2     Exhibit 12.1.

3                     Mr. Mazurek sponsors rebuttal  
4     testimony identified as Ameren Exhibit 30.0 with  
5     supporting exhibits identified as Ameren Exhibit 30.1  
6     through 30.5.

7                     Mr. Mazurek also sponsors surrebuttal  
8     testimony which is identified as Ameren  
9     Exhibit 47.0.his testimony is supported by his  
10    affidavit which is marked as Ameren Exhibit 47.1.

11                    We would move for the admission of  
12    that testimony at this time.

13                    JUDGE ALBERS: Any objections?

14                    Hearing none, Ameren Exhibits 12.0E,  
15    12.0G, 12.1, 30.0, 30.1 through 30.5, 47.0 and 47.1  
16    are admitted.

17                             (Whereupon Ameren Exhibits  
18                             12.0E, 12.0G, 12.1, 30.0, 30.1  
19                             through 30.5, 47.0 and 47.1 were  
20                             admitted into evidence at this  
21                             time.)

22                    JUDGE ALBERS: Okay.

1           MR. STURTEVANT: Next, Your Honor, we have the  
2 testimony of Ameren Illinois witness Karen R. Althoff  
3 (A-l-t-h-o-f-f).

4                   Ms. Althoff sponsors direct testimony  
5 identified as Ameren Exhibit 13.0G Revised with  
6 supporting exhibits identified as Ameren  
7 Exhibits 13.1G through 13.8G, 13.9G Revised and  
8 13.10G through 13.12G.

9                   Ms. Althoff also sponsors supplemental  
10 direct testimony identified as Ameren Exhibit 19.0  
11 with a supporting exhibit identified as Ameren  
12 Exhibit 19.1.

13                   Ms. Althoff sponsors rebuttal  
14 testimony identified as Ameren Exhibit 33.0 Revised  
15 with supporting exhibits identified as Ameren  
16 Exhibits 33.1 through 33.11.

17                   Finally, Ms. Althoff sponsors  
18 surrebuttal testimony which is identified as Ameren  
19 Exhibit 50.0. Her testimony is supported by her  
20 affidavit which is marked as Ameren Exhibit 50.1, and  
21 we would move for admission of Ms. Althoff's  
22 testimony.

1 JUDGE ALBERS: Any objections?

2 Hearing none, Ameren Exhibits 13.0G  
3 Revised, 13.1G through 13.8G, 13.9G Revised, 13.10G  
4 through 13.12G, 19.0, 19.1, 33.0 Revised, 33.1  
5 through 33.11, 50.0 and 50.1 are admitted.

6 (Whereupon Ameren Exhibits 13.0G  
7 Revised, 13.1G through 13.8G,  
8 13.9G Revised, 13.10G through  
9 13.12G, 19.0, 19.1, 33.0  
10 Revised, 33.1 through 33.11,  
11 50.0 and 50.1 were admitted into  
12 evidence at this time.)

13 JUDGE ALBERS: Okay.

14 MR. STURTEVANT: And lastly, we have the  
15 testimony of Ameren Illinois witness Stan E. Ogden  
16 (O-g-d-e-n.)

17 Mr. Ogden sponsors rebuttal testimony  
18 identified as Ameren Exhibit 28.0 with supporting  
19 exhibit Ameren Exhibit 28.1.

20 Mr. Ogden also sponsors surrebuttal  
21 testimony identified as Ameren Exhibit 53.0.

22 His testimony is supported by his

1       affidavit which is marked as Ameren Exhibit 53.1.

2                       We would move for the admission of  
3       Mr. Ogden's testimony.

4               JUDGE ALBERS:   Any objection?

5                       Hearing none, Ameren Exhibits 28.0,  
6       28.1, 53.0 and 53.1 are admitted.

7                               (Whereupon Ameren Exhibits 28.0,  
8                               28.1, 53.0 & 53.1 were admitted  
9                               into evidence at this time.)

10               MR. STURTEVANT:   That's all we have, Your  
11       Honor, and it looks like we've successfully cleared  
12       out the room in the process.

13               JUDGE ALBERS:   Is there anything else for the  
14       record today?

15               MR. STURTEVANT:   I'm not aware of anything,  
16       Your Honor.

17               JUDGE ALBERS:   All right.   We'll continue this  
18       to 9 o'clock tomorrow.

19                               (Whereupon the hearing was  
20                               continued to September 15, 2011  
21                               at 9:00 a.m.)

22